PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

FILED DECEMBER 11, 2012

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	**Case No. 08-O-12108 (09-O-17599; 09-O-13300)**
WILLIAM GEORGE SCHWEIZER,	)	**OPINION**
A Member of the State Bar, No. 68546.	)	

After practicing law for 30 years without discipline, William George Schweizer committed misconduct in three cases from 2006 to 2009. At trial, he stipulated to facts establishing his culpability for: (1) failing to competently perform services; (2) failing to communicate with clients; (3) failing to obey a court order; and (4) not cooperating with the State Bar's Office of the Chief Trial Counsel (State Bar) during its investigation.

In each of the three cases, Schweizer filed civil complaints on behalf of his clients and then failed to properly investigate, respond to discovery, appear at hearings, or submit paperwork to perfect a judgment. In the first case, the superior court imposed monetary sanctions and dismissed the action with prejudice. The second case was also dismissed with prejudice. In the third case, Schweizer failed to collect his client's 2008 judgment.

The hearing judge found three mitigating factors and two aggravating factors. Giving great weight to Schweizer's 30-year discipline-free record, the hearing judge recommended a 60-day suspension subject to a one-year stayed suspension, and two years' probation.

Both the State Bar and Schweizer seek review on the level of discipline only. The State Bar requests at least a 90-day suspension and an order that Schweizer comply with California

Rules of Court, rule 9.20 (mandatory notice to counsel and clients about Supreme Court discipline order). Schweizer requests a stayed suspension since this is his first discipline case in 30 years of practicing law.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's culpability findings. However, we find less mitigation and more aggravation than the hearing judge did. While we hesitate to recommend increasing a suspension by only 30 days, we do so here based on Schweizer's serious misconduct in three cases, the significant client harm he caused, and the public's need for protection. Accordingly, we recommend a 90-day actual suspension and until Schweizer pays court-ordered sanctions and client restitution. We further recommend that Schweizer comply with the notice requirements of California Rules of Court, rule 9.20.

I. THE RODRIGUEZ MATTER (08-O-12108)

A. FINDINGS OF FACT[1]

In June 2006, Schweizer filed a civil complaint in Riverside County Superior Court on behalf of Lilia and Rogelia Rodriguez, who claimed they suffered injuries in an auto accident.[2] Schweizer did not respond to discovery requests or appear at a properly noticed case management conference (CMC). On January 18, 2007, the superior court issued an order to show cause (OSC) for sanctions/dismissal for Schweizer's failure to appear at the CMC. The court also ordered a hearing on opposing counsel's four motions to compel discovery. Schweizer did not respond or appear at the hearings. The court ordered that Schweizer's clients provide discovery and pay $830 in sanctions within 30 days, and that Schweizer pay $250 within 30 days for failing to appear at the CMC. Schweizer did not pay the sanctions.

[1] The hearing judge's factual findings in all three client matters were based largely on Schweizer's stipulation. We augment these findings with relevant facts from the record.

[2] *Rodriguez v. Lucero III*, case no. RIC 451899.

In June 2007, opposing counsel filed a motion to dismiss the case. Schweizer did not file a written opposition, but attended the hearing and explained that he moved his office and did not receive notice of the motion. The court dismissed the case with prejudice. Schweizer filed a motion to vacate the dismissal. The court granted the motion and restored the case to the civil active list, but ordered Schweizer to pay opposing counsel $1,000 in sanctions within 30 days, and to pay the previously imposed $250 within 20 days. Schweizer stipulated to assume the $830 sanction against his clients. He failed to pay any of these sanctions.

After the Rodriguez action was reinstated, neither Schweizer nor his clients appeared at depositions or court hearings. The superior court ordered an additional $830 as a joint sanction. In September 2008, the court again granted opposing counsel's motion to dismiss the case with prejudice. At the time of his discipline trial in November 2011, Schweizer had not paid any of the court-ordered sanctions, which totaled $2,910.

In May 2008, while the civil case was pending, opposing counsel filed a complaint with the State Bar about Schweizer's conduct. In June, July, and October 2008, a State Bar investigator wrote to Schweizer requesting a written response to the allegations in the complaint. Schweizer did not respond or otherwise cooperate in the investigation.

B. CONCLUSIONS OF LAW

Count One: Failing to Act Competently (Rules Prof. Conduct, rule 3-110(A)[3])
Count Two: Failing to Obey A Court Order (Bus. & Prof. Code, § 6103[4])
Count Three: Failing to Cooperate with the State Bar (§ 6068, subd. (i))

Count One charged that Schweizer failed to act competently in the Rodriguez matter. Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to

[3] Unless otherwise indicated, further references to "rule(s)" are to the State Bar Rules of Professional Conduct.

[4] Unless otherwise indicated, further references to "section(s)" are to the Business and Professions Code.

perform legal services with competence." Schweizer did not respond to discovery, file responses to motions, or appear at properly noticed hearings. Due to his inaction, the superior court imposed monetary sanctions and dismissed the case on two separate occasions. Schweizer's conduct clearly demonstrates he failed to competently perform legal services in the Rodriguez matter.

Count Two charged Schweizer with failing to obey a court order by not paying sanctions in violation of section 6103, which provides that a "willful disobedience or violation of an order of the court requiring [an attorney] to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear . . . constitute[s] cause[ ] for disbarment or suspension." Schweizer is culpable because he has not paid the court-ordered sanctions.

Count Three charged that Schweizer failed to cooperate with the State Bar by not responding to investigatory letters. Section 6068, subdivision (i), requires an attorney to "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself." Schweizer is culpable because he did not respond to the State Bar investigator's letters. (*In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589 [attorney violated § 6068, subd. (i), for not responding to two State Bar investigator's letters].)

II. THE NEIGHBORS MATTER (09-O-17599)

A. FINDINGS OF FACT

In November 2005, Schweizer filed a complaint in Orange County Superior Court on behalf of Leonard Neighbors, who sustained injuries in an auto accident. A California Highway Patrol report identified James Louis Marolda as the driver at fault, but it was David Marolda who held the auto insurance. In the complaint, Schweizer incorrectly named David Marolda as the

defendant. Schweizer did not conduct discovery or otherwise investigate the case to determine whether or not David Marolda was the driver who caused the accident.

On October 8, 2008, when the case was called for trial, David Marolda's attorney told the court that his client was an improper defendant since he was not involved in the accident. The following day, after the trial commenced, Schweizer moved to add "James L. Marolda" as a defendant, but the court denied the motion. David Marolda's attorney moved for non-suit. The court granted the motion, dismissed the case, and ordered Neighbors to pay $8,842.52 in defense costs to David Marolda. A lien to collect these costs was recorded against Neighbors's home.

On December 8, 2009, Schweizer filed a notice of appeal. Shortly thereafter, he notified Neighbors of the filing. However, Schweizer did not properly designate the record or pay the filing fees for the appeal. On December 26, 2008, the appellate court served Schweizer with a Dismissal Notice, warning that if he did not seek relief within 15 days, the appeal would be dismissed for failure to prosecute with due diligence. Schweizer did not seek relief and the appeal was dismissed.

From January 2009 to October 2009, Neighbors and his wife unsuccessfully tried to reach Schweizer to inquire about the status of the appeal. Schweizer stipulated that he failed to respond to the many emails, telephone calls, and texts that the Neighbors sent him during this 10-month period.

At Schweizer's discipline trial, Neighbors's wife explained that after the lien was recorded, the interest rate on the Neighbors' credit cards increased to 29.9 percent and their credit rating dropped. The Neighbors were left to "juggle" bills and incur late fees to make timely lien payments.

B. CONCLUSIONS OF LAW

Count Four: Failing to Act Competently (Rule 3-110(A))
Count Five: Failing to Respond to Reasonable Client Inquiries (§ 6068, subd. (m))

Count Four charged Schweizer with failing to act competently in representing Neighbors. For nearly three years, Schweizer did not conduct any discovery or amend the civil complaint to correctly allege James Marolda as the driver who caused the accident. Ultimately, the superior court dismissed the case and the appellate court dismissed Schweizer's defective appeal. Such ongoing case mismanagement demonstrates Schweizer's failure to perform with competence.

Count Five charged that Schweizer failed to properly communicate with Neighbors about his appeal. Secton 6068, subdivision (m), requires an attorney to "respond promptly to reasonable status inquiries of clients . . . ." After the appeal was dismissed, Schweizer failed to respond to the Neighbors' legitimate inquiries about the status of the case for 10 months. We therefore find him culpable as charged.

III. THE TINGLE MATTER (09-O-13300)

A. FINDINGS OF FACT

In January 2005, Kathy Tingle hired Consumer Law Group (CLG) to represent her claims for bodily injury and property damage arising out of an automobile accident. In May 2006, CLG associated Schweizer as attorney for Tingle concerning these claims.

In June 2006, Schweizer filed a civil complaint in San Diego County Superior Court on behalf of Tingle. The defendant driver was insured by Allstate Insurance Company. In June 2008, a jury awarded Tingle $5,500, but reduced it to $1,745 for her comparative fault. This amount was less than Tingle owed for her outstanding court costs and medical bills.

Between January 30, 2009 and April 2009, Tingle repeatedly emailed Schweizer about disbursing the judgment proceeds since medical providers were requesting payment. Schweizer

did not respond to Tingle's communications. In June 2009, Tingle filed a complaint with the State Bar. In August and October 2009, a State Bar investigator sent Schweizer letters requesting his written response to the allegations raised in Tingle's complaint. Schweizer did not respond to the investigator's letters.

In April 2009, the attorney for Allstate wrote to Schweizer and agreed to release the check for $1,745 upon receipt of a conformed copy of the judgment and an acknowledgement of satisfaction of judgment. Schweizer failed to promptly prepare, file, and send these documents to Allstate's counsel. As a result, Schweizer did not receive the $1,745 check until February 2011, over two and a half years after the jury verdict.

In March 2011, Schweizer forwarded the $1,745 check to Tingle, requesting that she endorse and return it so that the funds could be deposited and distributed. Tingle complied. Schweizer made no further contact with Tingle. At the discipline trial in November 2011, Schweizer testified that he has not negotiated Tingle's $1,745 check or distributed the proceeds because the check was "stale" and "dated." He also confirmed that he had yet to obtain a replacement check. Finally, Schweizer testified that even though he agreed to waive his attorney fees, Tingle's outstanding medical bills were more than $1,745.

B. CONCLUSIONS OF LAW

Count Six: Failing to Act Competently (Rule 3-110(A))
Count Seven: Failing to Respond to Reasonable Client Inquiries (§ 6068, subd. (m))
Count Eight: Failing to Cooperate with the State Bar (§ 6068, subd. (i))

Count Six charged Schweizer with failing to act competently by not timely completing paperwork so Tingle's $1,745 judgment could be paid, and by failing to resolve her medical bills and expenses. We find that Schweizer did not timely complete the documents that Allstate requested. Further, more than three years after the jury verdict, Schweizer had not replaced the

"stale" $1,745 check nor had he resolved Tingle's court costs or medical bills. Such unreasonable delay demonstrates that Schweizer failed to act competently.

Count Seven charged Schweizer with violating section 6068, subdivision (m), for not responding to Tingle's reasonable inquiries. Schweizer repeatedly ignored Tingle's attempts to contact him about her judgment. Accordingly, he is culpable as charged.

Count Eight charged that Schweizer failed to cooperate with the State Bar because he did not respond to the investigator's two letters. Schweizer stipulated he provided no response to the letters and did not otherwise cooperate in the investigation. We find him culpable as charged.

IV. AGGRAVATION AND MITIGATION

The offering party bears the burden to prove aggravating and mitigating circumstances. The State Bar must establish aggravating circumstances by clear and convincing evidence[5] (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)[6]), while Schweizer has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. THREE FACTORS IN AGGRAVATION

The hearing judge found two aggravating factors: (1) multiple acts of misconduct; and (2) significant client harm. We adopt these factors and find additional aggravation for Schweizer's indifference.

1. Multiple Acts (Std. 1.2(b)(ii))

Schweizer engaged in multiple acts of misconduct involving three clients over three years. The duration and extent of his wrongdoing substantially aggravates this case.

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[5] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[6] Unless otherwise noted, all further references to "standard(s)" are to this source.

2. Significant Harm (Std. 1.2(b)(iv))

Schweizer's misconduct significantly harmed two clients. The superior court dismissed the Rodriguez and Neighbors cases with prejudice due to Schweizer's failure to properly litigate them. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 283 [attorney's failure to perform resulting in lost cause of action is significant client harm].) The Neighbors were also financially harmed when the superior court ordered them to pay $8,842 to David Morolda, and a lien was placed on their home. The Neighbors were required to defer bills, incur late fees, and make other sacrifices to ensure timely payments of their bills. The totality of this harm constitutes substantial aggravation.[7]

3. Indifference (Std. 1.2(b)(v))

Lack of remorse and failure to acknowledge misconduct are aggravating factors. (*Weber v. State Bar* (1988) 47 Cal.3d 492, 506.) Although Schweizer agreed to waive his attorney fees, he has not demonstrated remorse for failing to inform Tingle about the status of her $1,745 judgment or otherwise resolve her matter. Moreover, Schweizer has not paid the sanctions in the Rodriguez matter that the superior court ordered in 2007 and 2008. Such indifference to his client and the court substantially aggravates this case.

B. THREE FACTORS IN MITIGATION

The hearing judge found three factors in mitigation: (1) no prior record of discipline; (2) extreme emotional and physical disabilities; and (3) good character. We adopt only the first factor but assign some additional mitigation for Schweizer's cooperation for stipulating to facts that established culpability and for his pro bono work.

[7] We do not assign aggravation for harm in Tingle's matter. We find that Schweizer did not *significantly* harm Tingle even though she was inconvenienced when he failed to communicate or timely obtain her judgment monies. The record reveals that Tingle is unlikely to receive any of the $1,745 after her medical bills and/or court costs are paid, and the State Bar presented no specific evidence of other harm resulting from the delay in payment, such as credit problems or financial stress.

1. No Prior Disciplinary Record (Std. 1.2(e)(i))

Standard 1.2(e)(i) provides that mitigation shall be considered for the "absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious." Under the standard, discipline-free practice is considered in mitigation if: (1) no discipline has been imposed for many years; and (2) the misconduct is not serious. Schweizer meets the first requirement as he was admitted to the Bar in May 1976, and practiced law for 30 years before he committed his first act of misconduct in 2006. (See, e.g., *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116 [mitigation credit for nine years of discipline-free practice before misconduct began].) However, he failed to perform competently in three client matters which is a "a serious breach of his duty as an attorney . . . ." (*King v. State Bar* (1990) 52 Cal.3d 307, 313 [failure to perform in two client matters deemed serious breach of attorney duty].) In view of Schweizer's serious misconduct, we consider what weight, if any, to give to his lack of prior record in determining the proper discipline.

The Supreme Court in *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029, has instructed that "[p]rior exemplary conduct and a distinguished career may be relevant as factors indicative of the probability that misconduct will not likely recur . . . ." When such mitigation is present, a lower level of discipline may be appropriate, particularly if the serious misconduct occurred during a "single period of aberrant behavior." (*Ibid.*)

Here, Schweizer's misconduct was limited to three cases in three years as weighed against over 30 years of discipline-free practice. Further, he acknowledged his wrongdoing by entering into a stipulation establishing culpability. Even though Schweizer failed to pay the sanctions or resolve Tingle's judgment, his long history of discipline-free practice and his acknowledgement of wrongdoing indicate future misconduct is unlikely to occur. Therefore,

Schweizer's lack of prior record is relevant and we assign it significant weight in mitigation. (Std. 1.2(e)(i).)[8]

2. Extreme Emotional and Physical Difficulties (Std. 1.2(e)(iv))

To receive mitigation under standard 1.2(e)(iv), an attorney: (1) must prove that he or she suffered from extreme emotional difficulties at the time of the professional misconduct; (2) which an expert establishes were directly responsible for the misconduct; and (3) he or she no longer suffers from such difficulties. The hearing judge assigned mitigating credit based on Schweizer's testimony that he experienced emotional and physical difficulties in 2007 and 2008. We agree that Schweizer established the first requirement of the standard because he suffered from a health problem from 2007 to 2009, and had sleep and emotional disturbances when his family received death threats in 2007. But he failed to prove the standard's other two requirements – a causal connection between these difficulties and his misconduct, and full rehabilitation from the problems.

As to the second and third requirements, Schweizer did not present an expert to prove the extent of his difficulties, the causal connection between them and his misconduct, or his full rehabilitation. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [no mitigation credit given where lack of expert testimony to establish emotional and financial difficulties directly caused misconduct]; *In re Lamb* (1989) 49 Cal.3d 239, 246 [before emotional difficulties may qualify as mitigating circumstance, proof of complete, sustained recovery and rehabilitation must be established].) Also, Schweizer's problems from 2007 to 2009 do not

[8] The Supreme Court and this court have assigned mitigation credit for no prior record of discipline despite serious misconduct where the attorney committed isolated acts of wrongdoing, rather than a pattern of misconduct in non-disbarment cases. (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28 [12 years of discipline-free practice in one client matter where extenuating circumstances were present]; *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59 [14 years of discipline-free practice in two client matters].)

explain why he performed incompetently in 2006 in the Rodriguez matter, or why he has not paid the court-ordered sanctions. We assign no mitigation for extreme emotional and physical difficulties because Schweizer failed to prove each of the standard's requirements by clear and convincing evidence.[9]

3. Good Character (Std. 1.2(e)(vi))

Standard 1.2(e)(vi) requires "an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct." Schweizer submitted declarations from only two attorneys, although he has been in practice for over 30 years. Both attorneys credibly described Schweizer as moral, ethical, honest, and an excellent attorney. The hearing judge found that the length of Schweizer's relationships with these attorneys (since 1972 and 1989) was "significant," but concluded that the two declarations did not represent an extraordinary demonstration of good character by a wide range of references in the legal and general communities. Even so, the hearing judge assigned mitigating credit for good character.

We decline to assign any mitigation credit because the overall character evidence does not meet the standard's requirements. First, as the hearing judge noted, the declarations do not represent a wide range of references in the legal and general communities. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 67 [character evidence from two judges and two attorneys not wide range of references].) Second, the declarations do not establish that the attorneys were fully knowledgeable about Schweizer's misconduct.

[9] We also reject Schweizer's claim for mitigation based on his heavy case load. An attorney's busy practice and time constraints are not mitigating factors. (*In re Naney* (1990) 51 Cal.3d 186, 196 [fact that attorney had heavy caseload at time of misconduct is not mitigation]; *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [time constraints of a busy solo practice are not mitigation].)

(See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [limited mitigation where declarants not fully aware of misconduct].) Each witness stated the following familiarity with the *charges* in the NDC, without acknowledging Schweizer's stipulated misconduct: "I understand that he [Schweizer] is *defending* complaints for failure to perform competently, failure to pay sanctions per Court Order and failure to cooperate with the State Bar." (Italics added.) Since Schweizer chose to present this testimony by declaration, the witnesses could not be examined to establish whether or not they understood the full extent of his misconduct, as the standard requires. On this limited record, Schweizer did not establish good character for mitigation purposes by clear and convincing evidence.

4. Candor and Cooperation (Std. 1.2(e)(v))

Spontaneous candor and cooperation to victims and the State Bar during an investigation and proceeding for attorney discipline is a mitigating factor. (Std. 1.2(e)(v).) Schweizer entered into a comprehensive Partial Stipulation as to Facts, Conclusions of Law, and Admission of Documents that established his culpability in all three client matters. This cooperation greatly expedited the case. The State Bar prosecutor agreed at trial that Schweizer's stipulation was a factor in mitigation, although he properly asked that it be weighed against Schweizer's failure to cooperate during the investigation. Accordingly, we assign some mitigating credit for Schweizer's cooperation at trial based on his stipulation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

5. Additional Mitigation

Pro bono and community service are mitigating factors. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Schweizer argues that he is entitled to mitigation credit for participating in pro

bono activities since 1988, including: (1) the Volunteers in Parole program that matches attorneys with released inmates; (2) the Los Angeles District Attorney Short Stop program that pairs attorneys with at-risk youth; and (3) pro bono services for immigration clients. Schweizer testified that he also helped many private litigants since he has "really never turned away anyone . . . because of money or compensation problems."

Schweizer's service to the community is commendable. However, it occurred over 10 years ago, and he presented only his own testimony to establish very minimal details about it. (See *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 193 [limited mitigation weight for community service established only by respondent's testimony].) Since we are unable to fully and meaningfully evaluate Schweizer's service, we assign it nominal mitigating credit.

V. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

We begin our analysis with the standards, which the Supreme Court instructs us to follow "whenever possible." (*In re Young, supra,* 49 Cal.3d at p. 267, fn. 11.) As always, we give the standards great weight to promote consistency in disciplinary matters. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) The applicable standards direct us to focus on the gravity of the misconduct and

the degree of client harm.[10] We conclude that Schweizer's misconduct is serious because it involved failure to competently perform in three client matters, and it caused significant client harm when the superior court dismissed two cases with prejudice. Since the applicable standards suggest a broad range of discipline (reproval to disbarment), we look to comparable case law for guidance. Two cases are instructive.

We start with *King v. State Bar, supra,* 52 Cal.3d 307, a case upon which the hearing judge relied. In *King*, the Supreme Court imposed a three-month suspension where an attorney failed to perform or return files in two client matters, had no prior discipline in almost 14 years of practice, and suffered from financial and emotional difficulties. The attorney was not remorseful. One client lost his cause of action and another suffered long-term emotional distress.

The hearing judge found that Schweizer's case presented "greater misconduct but greater mitigation" than in *King*, and imposed only a 60-day suspension. We agree that Schweizer has greater mitigation than *King*, but Schweizer's misconduct was significantly more serious and harmful because it involved three matters where clients lost their causes of action in two matters. Further, Schweizer demonstrated indifference by failing to resolve Tingle's judgment or pay court-ordered sanctions. The *King* decision supports a 90-day suspension.

We also consider *Harris v. State Bar* (1990) 51 Cal.3d 1082. In *Harris*, an attorney failed to perform and improperly withdrew from representation in one matter over a four-year period, resulting in financial harm to the client. The attorney, who had practiced for over 10 years without discipline, suffered from typhoid fever at the time of the misconduct, but displayed

[10] Multiple standards apply to Schweizer's misconduct: 1.6(a) instructs that we apply the most severe sanction when multiple acts of misconduct call for different sanctions; 2.4(b) imposes reproval or suspension for failing to perform services or communicate with a client depending on the extent of misconduct and degree of client harm; and 2.6 imposes disbarment or suspension for failing to cooperate with the State Bar, depending on the gravity of the offense or the harm to the victim.

indifference and a lack of candor. The Supreme Court imposed a 90-day actual suspension. Overall, we find the circumstances in *Harris* to be analogous to those in Schweizer's case.

Guided by *King* and *Harris*, we recommend that Schweizer be suspended for 90 days, and until he pays the court-ordered sanctions and $1,745 to Tingle.[11] As we indicated at the outset of this decision, we generally do not recommend increasing a suspension by only 30 days, but Schweizer's misconduct is serious, it caused extensive client harm, and he has failed to pay court-ordered sanctions. Further, an important part of our recommendation requires Schweizer to comply with California Rules of Court, rule 9.20, which serves the "critical prophylactic function of ensuring that all concerned parties – including clients, co-counsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending – learn about an attorney's discipline." (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) We view this increased discipline, particularly the notification requirement, as necessary to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

We recommend that William George Schweizer, member no. 68546, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Schweizer be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first 90 days of the period of his probation, and remain suspended until the following conditions are satisfied:

    a. He pays the sanctions ordered by the Riverside Superior Court in the total amount of $2,910, and furnishes satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.

[11] Schweizer contends that decisional law does not support an actual suspension and cites six cases with at least one count of failure to perform with competence. We find these cases to be distinguishable from Schweizer's matter for several reasons, including that they involved: (1) dissimilar misconduct overall, (2) lack of similar client harm, or (3) different mitigating and aggravating factors.

b. He pays Kathy Tingle $1,745 plus 10 percent interest per annum from February 1, 2011, and furnishes satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.[12]

c. If he remains suspended for a period of two years or longer, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

[12] We make no order in the Neighbors case as it is inappropriate to use restitution in attorney discipline matters as a means of awarding tort damages, such as for malpractice. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 650.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Schweizer has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that William George Schweizer be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter or during the period of suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. RULE 9.20

We further recommend that William George Schweizer be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.