PUBLIC MATTER – DESIGNATED FOR PUBLICATION

FILED APRIL 16, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-12820
	)	
MARGARET ALICE SELTZER,	)	OPINION
	)	
A Member of the State Bar, No. 87707.	)	
	)	

A construction company paid respondent Margaret Alice Seltzer a $6,000 advance fee to resolve its dispute with a school district over payment for work the company had performed on a renovation project. For two months, the three owners of the construction company repeatedly telephoned and sent email inquiries to Seltzer about the status of their matter. However, Seltzer either made excuses for her unavailability or did not respond at all. Her client finally terminated her services and asked Seltzer to return the $6,000 fee. When she refunded only $1,500, the client complained to the Office of the Chief Trial Counsel (State Bar).

The hearing judge found that Seltzer failed to perform competently, in violation of Rules of Professional Conduct, rule 3-110(A),[1] and failed to return the unearned portion of her fees, thereby violating rule 3-700(D)(2). The judge further found significant aggravation, including prior discipline, and no mitigation. Ultimately, the hearing judge recommended that Seltzer be actually suspended for one year and that she be placed on probation for two years with conditions.

[1] All further references to rules are to the State Bar Rules of Professional Conduct unless otherwise noted.

Seltzer challenges the hearing judge's culpability findings and asserts that the aggravation findings are not supported by the evidence. She also contends that the judge erred by denying her motion to abate the disciplinary proceedings, and requests dismissal of all of the charges. Alternatively, Seltzer asks that the case be remanded for a new trial. The State Bar did not seek review, but requests that we affirm the decision below.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), considering the specific factual findings raised by the parties. (Rules Proc. of State Bar, rule 5.152(C) [any factual error not raised on review is waived by parties].) In so doing, we find no merit to Seltzer's procedural or substantive claims. We affirm the hearing judge's findings that Seltzer failed to perform competently in violation of rule 3-110(A) because she provided no service of value to her clients, and she failed to return unearned fees in violation of rule 3-700(D)(2). Although we agree on the absence of mitigation evidence, we find less aggravation than that found by the hearing judge.

Since Seltzer's previous discipline in 2012 included a 60-day actual suspension, a greater discipline is appropriate. However, we find the one-year actual suspension recommended by the hearing judge is excessive in light of the decisional law and the applicable standards.[2] Instead, we conclude that Seltzer should be actually suspended for six months and until she satisfies her restitution obligation as set forth below, to protect the public, the courts, and the legal profession.

I. FACTUAL AND PROCEDURAL BACKGROUND

Seltzer was admitted to practice law in 1979. The present matter involved Igal Sarfaty, Yair Elor and Yuval Bobrovitch, who were the three principals of SEB Construction, Inc. (SEB). In 2009, SEB renovated a temporary administration building for the Dublin Unified School District. As the project neared completion, a dispute arose over payment for extra work SEB

[2] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

performed. Sarfaty, Elor and Bobrovitch met with Seltzer on November 10, 2009, to discuss options for obtaining payment from the school district, including drafting a demand letter and filing a claim. Although SEB was still negotiating with the school district, the principals considered the issue urgent as their time to present a claim was about to expire.

On November 17, 2009, the three principals signed a "Fee and Retention Agreement" on behalf of SEB, agreeing to pay Seltzer $300 per hour plus an advance fee of $6,000. Seltzer agreed to "provide legal services in connection with the evaluation of a claim against Dublin Unified School District . . . and advice concerning the pursuit of said claim. This engagement is a limited one not to exceed 20 hours of work and shall not obligate [Seltzer] to file any claim, suit, or arbitration." The fee agreement provided that it could be subsequently modified by "an oral agreement only to the extent that the parties carry it out."

Two days after signing the agreement, Sarfaty emailed Seltzer to advise her that "[a]fter speaking to my partners we would like to put a budget of 10 hours for you to review the material and to write a demand letter." He asked Seltzer to determine if a demand letter would be effective or if they should "file a claim right away." Seltzer never responded to this email.

About ten days later, Sarfaty began regularly emailing and calling Seltzer for an update but Seltzer did not respond. On December 9, 2009, Sarfaty expressed his concern in an email and asked if Seltzer had reviewed SEB's materials. She replied that she had been "out of town on an emergency and my e-mail was down." But Seltzer asserted that she had reviewed all of the documents and had a few questions. Elor responded to Seltzer's questions the next day.

Sarfaty continued to attempt to contact Seltzer regularly to request a copy of the demand letter. After about a month with no response from Seltzer, Sarfaty sought the help of another attorney, Michael Notaro, to facilitate a response from Seltzer. On January 5, 2010, Notaro called Seltzer and left a voice message. She did not return Notaro's call, but instead left a voice

message for Elor, explaining that she had been sick and dealing with emergencies, but had almost completed the demand letter. Elor responded by email on January 8, asking Seltzer: "Are you now ready and able to assume our case? And why couldn't you let us know what is going on . . . ?" Elor also requested that Seltzer call Sarfaty to discuss how they should proceed.

When Seltzer failed to contact Sarfaty, the SEB principals asked Notaro to terminate her, which he did by letter dated January 14, 2010. In that letter, Notaro requested the "return of the entire $6,000 which you collected from SEB immediately. As I understand it, no legal work has been performed in this matter." Seltzer responded the same day, disputing that she had not performed the requested legal services. She asserted: "I had performed a preliminary analysis, done some work on the demand letter we discussed, and needed additional documentation and factual information." Seltzer confirmed she would stop working on the matter as requested.

SEB obtained new counsel, David Anderson, to represent it in its dispute with the school district. He contacted Seltzer on February 11, 2010, and asked for SEB's construction documents, which she immediately sent to him. On January 22 and February 4, 2010, Seltzer sent two invoices to SEB, charging $3,300 through December 31, 2009, and an additional $1,200 for the following services: reviewing documents; legal research; preparing a chronology and a factual background; review and analysis of the contract; drafting and revising a demand letter; and one telephone conference with Elor.[3] Despite the work specified in her invoice, Seltzer never provided SEB with a preliminary analysis, an evaluation of the merits of their claim, or a

[3] The hearing judge found that Seltzer was not credible in claiming that she had performed these services between November 17, 2009 and January 14, 2010, because she had previously told her clients that she was out of town, sick or had unforeseen emergencies during this time period. We give great deference to the judge's credibility finding. (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280 [hearing judge's credibility findings entitled to great weight].)

draft of the demand letter.[4] Nor did she provide SEB with any advice about how to proceed against the school district. On February 11, 2010, Seltzer sent SEB a $1,500 check, which her cover letter described as "the balance from the trust account."

SEB complained to the State Bar, and on October 6, 2011, the State Bar filed a Notice of Disciplinary Charges (NDC) alleging two counts of misconduct. One month before the trial below was set to begin, Seltzer filed a motion for abatement pursuant to rule 5.50 of the Rules of Procedure of the State Bar, pending the conclusion of a civil matter, *Seltzer v. SEB Construction, Inc*. Seltzer filed this action in San Francisco Superior Court after she rejected SEB's non-binding arbitration award for attorney fees. The hearing judge denied her motion for abatement on January 20, 2012.

The matter was submitted after a four-day trial. The hearing judge found that Seltzer was not credible because her trial testimony was inconsistent and often contradicted by other witnesses. In contrast, the hearing judge found the other witnesses to be credible and their testimony was corroborated by documentary evidence. We give these credibility determinations great weight. The hearing judge concluded that Seltzer was culpable of violating rule 3-110(A) and rule 3-700(D)(2) and that there were five factors in aggravation, with no mitigation. Seltzer appeals these findings.

II. NO ABUSE OF DISCRETION IN DENIAL OF MOTION TO ABATE TRIAL

Seltzer maintains that the hearing judge should have granted her motion to abate the disciplinary proceedings until the trial in *Seltzer v. SEB Construction, Inc.* had concluded. She argues that the issues in both proceedings concern the "time spent on the matter [involving SEB] and the value of the services performed." Seltzer also claims she was unable to obtain relevant

[4] At trial, Seltzer produced a draft demand letter, a chronological description of SEB's construction documents and negotiations with the school district, and a legal memorandum. It was the first time the SEB principals had seen any of these documents.

evidence in these proceedings due to the State Bar's new "streamlined" discovery rules, and thus abatement was necessary for her to utilize the discovery tools available to her in the civil action.

Rule 5.50 of the Rules of Procedure of the State Bar permits consideration of any relevant factor in determining whether to grant a motion for abatement, including "the need to dispose of the proceeding at the earliest time . . . ." Seltzer delayed filing her abatement motion until one month before her disciplinary trial, and this was her second discipline proceeding within one year. Thus, the hearing judge did not abuse her discretion by proceeding with the trial in light of the State Bar's interest in protecting the public, safeguarding the integrity of the legal system and maintaining public confidence in the legal profession. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461 [order of abatement is procedural matter reviewable for abuse of discretion].)

Moreover, Seltzer's justifications for abating the discipline trial are not persuasive. Discipline matters are sui generis and the issue here is whether Seltzer performed with competence, while the civil proceeding dealt with recovery of damages based on breach of contract and fraud. Furthermore, Seltzer's discovery rights under the revised Rules of Procedure of the State Bar, rule 5.65 et seq., which are based on similar discovery provisions in the California Administrative Procedure Act (Gov. Code sections 11507.5 et seq.), satisfy fair trial concerns. (See, e.g., *Cimarusti v. Superior Court* (2000) 79 Cal.App.4th 799, 809 [prehearing discovery procedures in Administrative Procedure Act sufficient to satisfy due process].) We find that the hearing judge properly exercised her discretion in denying Seltzer's motion to abate these proceedings.

III. CULPABILITY FOR TWO COUNTS OF MISCONDUCT

A. Count One: Failure to Perform Legal Services with Competence (Rule 3-110(A))

Seltzer was charged in Count One with violating rule 3-110(A), which provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The hearing judge determined that Seltzer willfully violated the rule by failing to provide: (1) an evaluation of SEB's claim against the school district; (2) a demand letter; and (3) advice to SEB about how to proceed with the case. Clear and convincing evidence supports this culpability determination.[5]

Seltzer argues that she fully and competently performed in accordance with the terms of the Fee and Retention Agreement with SEB. She insists that she was hired only to gather information to evaluate SEB's claim and to counsel Elor about his negotiations with the school district. She testified: "There were no deliverables on this engagement, none." According to Seltzer's interpretation of the fee agreement, she "wasn't necessarily supposed to do anything."

Bobrovitch and Sarfaty credibly testified that they hired Seltzer to review their construction documents and write a demand letter, and that she agreed to complete that task in short order. The various emails between them and Seltzer corroborate Bobrovitch and Sarfaty's understanding of their agreement with her, as does Seltzer's invoice indicating she spent six hours drafting and revising a demand letter and her voice message to Elor assuring him that she was almost finished with her draft of the letter. We thus reject Seltzer's interpretation of the fee agreement. (*Beard v. Goodrich* (2003) 110 Cal.App.4th 1031, 1037 [court considers extrinsic evidence concerning parties' intentions to determine if contract language is reasonably

[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.)

susceptible to interpretation urged by party]; *Mahoney v. Sharff* (1961) 191 Cal.App.2d 191, 196 [fee agreement prepared by attorney is "most strongly" construed against attorney].)

In an attempt to cure the inconsistency between her position that she was not hired to draft a demand letter and her billing statement that she did in fact prepare such a letter, Seltzer explained that she "started drafting [the demand letter] just as an ongoing exercise" so that she would have a draft prepared "if it turns out . . . I am hired to send a demand letter." Her explanation is disingenuous at best.

We conclude that Seltzer willfully violated section 3-110(A) by failing to prepare a demand letter and case evaluation, or to provide any service of value to SEB. After two months, Seltzer's "meager and incomplete effort" to advise SEB about its construction dispute constituted a reckless failure to perform with competence. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950; see *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 399 [attorney failed to perform competently when he agreed to prosecute case but failed to do so]; *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action toward purpose client retained him to accomplish].) Seltzer's repeated failure to respond to her clients' phone calls and emails is additional evidence that she failed to perform legal services with competence, particularly since the clients were concerned that the time to file a claim against the school district would expire. "Adequate communication with clients is an integral part of competent professional performance as an attorney." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 782.)

B. Count Two: Failure to Return Unearned Fees (Rule 3-700(D)(2))

The hearing judge found Seltzer violated rule 3-700(D)(2) by failing to refund $4,500 of the $6,000 advance fee that SEB paid. We agree. When a client terminates an attorney's services, the attorney is obligated to account for any fees paid and return to the client any

unearned portion of those fees. (Rule 3-700(D)(2).) Seltzer's clients demanded return of the entire $6,000 fee, but she sent them only $1,500, along with two statements describing the time and professional services she believed justified her retention of $4,500. Although Seltzer may have performed some services on SEB's behalf, her work was incomplete. More importantly, she never provided any work product or advice to the clients. (*In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267, 275 [attorney not entitled to retain advance fee where client did not receive draft or final trust agreement].) We find that Seltzer's clients were entitled to a refund of the entire $6,000 since they received nothing of value from her. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 323-324 [violation of rule 3-700(D)(2) where insufficient evidence of work performed and attorney did not obtain result for which he was retained].)

IV. AGGRAVATION AND MITIGATION

The appropriate discipline is determined in light of the relevant circumstances, including mitigating and aggravating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Seltzer must establish mitigation by clear and convincing evidence (std. 1.2(e)), while the State Bar has the same burden to prove aggravating circumstances. (Std. 1.2(b).)

A. Three Factors in Aggravation

The hearing judge found five factors that aggravated Seltzer's misconduct: (1) a prior discipline record; (2) uncharged misconduct; (3) lack of insight; (4) multiple acts of misconduct; and (5) significant client harm. We agree that Seltzer's prior record, lack of insight and uncharged misconduct are aggravating factors. We do not find that her wrongdoing is further aggravated by multiple acts of misconduct or client harm.

1. Prior Record of Discipline (Std. 1.2(b)(i))

On October 24, 2012, the Supreme Court suspended Seltzer for 60 days and until she made restitution, subject to a one-year stayed suspension and two years of probation. (Supreme Ct. case no. S204059; State Bar Ct. case no. 08-O-13227.) Seltzer was found culpable of six counts of misconduct in two client matters, including the unauthorized practice of law, failing to cooperate with the State Bar investigation, failing to keep a client informed of a significant development, charging and collecting an illegal fee and failing to promptly return a client's file.

Standard 1.2(b)(i) provides that an attorney's prior record of discipline shall be considered as an aggravating circumstance. However, merely citing Seltzer's disciplinary history, without more analysis, does not provide adequate guidance as to the aggravating weight to be assigned. Rather, "we must examine the nature and chronology of the respondent's record of discipline." (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

In Seltzer's prior matter, the NDC was filed in October 2011 and the Supreme Court ordered discipline in October 2012, both of which occurred *after* the misconduct in the present case. Therefore, Seltzer did not have an opportunity to appreciate or heed the import of the earlier discipline. Accordingly, we find the aggravating weight of Seltzer's prior discipline is greatly diminished. (*In the Matter of Miller, supra,* 1 Cal. State Bar Ct. Rptr. at p. 136 [prior discipline given less weight where imposed after commencement of second disciplinary proceeding].)

2. Uncharged Misconduct (Std. 1.2(b)(iii))

The hearing judge found Seltzer culpable of uncharged misconduct in aggravation for her failure to maintain the disputed fee in her CTA, in violation of rule 4-100(A)(2). This rule provides that "when the right of the member . . . to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved."

When SEB's attorney terminated Seltzer, he demanded return of the entire $6,000 advance fee. Thereafter, Seltzer withdrew $4,500 from her CTA as payment for her fee. Seltzer was not permitted to set her fees unilaterally (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1037), and once she became aware that SEB disputed her right to the funds held in her CTA, she was required to maintain that amount in her account until the dispute was resolved. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758 [if client contests fees, disputed funds must be placed in trust account until conflict is resolved].) The hearing judge properly considered the rule violation as aggravation because Seltzer's own evidence and testimony at trial established the rule 4-100(A) violation. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

3. Lack of Insight (Std. 1.2(b)(v))

We assign the most significant aggravation to Seltzer's lack of insight. Despite all of the evidence to the contrary, Seltzer remains unwavering in her belief that there was never "any action item or ball in my court to do anything" and that "there is no issue that I did whatever I was asked to do within a reasonable time frame." In her earlier discipline case, we admonished Seltzer about her unwillingness to even consider whether her position was meritless, citing to *In re Morse* (1995) 11 Cal.4th 184. In *Morse*, the Supreme Court found an attorney "went beyond tenacity to truculence" when he was unwilling to consider the appropriateness of his position. (*Id.* at p. 209.) Seltzer's continued lack of insight remains of serious concern.

4. No Multiple Acts of Misconduct (Std. 1.2(b)(ii))

We do not agree with the hearing judge that Seltzer engaged in multiple acts of wrongdoing. She was charged with only two counts of misconduct, which do not constitute multiple acts. (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 177 [no aggravation for multiple acts of wrongdoing when respondent culpable of three ethical violations].)

5. No Harm to Client (Std. 1.2(b)(iv))

We do not adopt the hearing judge's finding of client harm. The State Bar did not present specific evidence that depriving SEB of the $4,500 resulted in significant harm to the company. Further, there is no evidence that Seltzer's failure to competently provide legal services adversely affected SEB's ultimate ability to obtain satisfaction from the school district.

B. No Factors in Mitigation

We agree with the hearing judge that no mitigating factors are present.

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 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.)

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.) We give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal citation and quotations omitted.) Seltzer's violations of rule 3-110(A) and rule 3-700(D)(2) each call for reproval or suspension, depending on the seriousness of the misconduct and the extent of harm to the client.[6] We also are guided by standard 1.7(a), which calls for progressively more severe discipline when, as here, the attorney

[6] Standard 2.4(b) provides that the failure to perform services not demonstrating a pattern of misconduct or the failure to communicate with a client "shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client." Standard 2.10, which applies to rule 3-700(D)(2) violations, similarly provides for "reproval or suspension according to the gravity of the offense or the harm, if any, to the victim . . . ."

has a prior record, unless the prior discipline is remote in time and the offense was minimal in severity. Seltzer's prior misconduct is neither remote nor minimal.

The decisional law suggests that the one-year actual suspension recommended by the hearing judge is too severe. The hearing judge sought guidance from only one case: *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, where the attorney's misconduct included failing to provide legal services for which he was hired, failing to return unearned fees, failing to maintain client funds in a proper trust account, and dishonesty. (*Id.* at pp. 68-69.) While the gravamen of Trillo's misconduct was the failure to perform with competence, his transgressions were much more serious than Seltzer's. They involved multiple acts of wrongdoing and dishonesty, including Trillo's misrepresentation to his client that he was a partner in a law firm. (*Id.* at p. 69.) Moreover, his actions significantly prejudiced his client, who was unable to enforce an award due to Trillo's lack of competence. (*Id.* at p. 65.) Seltzer's conduct did not involve dishonesty or multiple acts, and she did not cause client harm. Thus, we find little guidance from *Trillo*.

Instead, we look to decisions where an attorney's failure to perform with competence was aggravated by prior misconduct. Such comparable case law supports discipline that includes a six-month actual suspension. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366 [six-month actual suspension where attorney failed to perform services competently by failing to distribute assets and close estate for five years, aggravated by prior record of discipline, lack of insight, harm to beneficiaries and minimal mitigation evidence]; *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 [six-month actual suspension for reckless failure to perform competent legal services for incarcerated client, failure to return unearned fees, and failure to respond to client's status inquiries, aggravated by multiple acts of misconduct, harm to client and indifference, with nominal mitigation for belated cooperation].)

We conclude that a six-month actual suspension will provide Seltzer with time to reflect on her ethical responsibilities to her clients and to gain insight into her misconduct. Further, Seltzer should remain suspended until she pays $4,500 plus interest in restitution to SEB. "It is common in State Bar matters involving the failure to perform services to require as a rehabilitative condition, restitution of unearned fees kept by the attorney and to deem as unearned the entire fee when only preliminary services were performed which did not result in benefit to the client." (*In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 231.)

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Margaret Alice Seltzer be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for two years on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first six months of the period of her probation and remain suspended until the following conditions are satisfied:

    a. She pays SEB Construction, Inc. $4,500 plus 10 percent interest per year from January 14, 2010, and furnishes satisfactory proof of payment to the State Bar Office of Probation in Los Angeles.

    b. If she remains suspended for two years or longer, she must provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law. (Std. 1.4(c)(ii).)

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her 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 her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she 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, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with

the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

5. She 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, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her 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, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.[7]

7. 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 Seltzer has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VII. RULE 9.20

We further recommend that Margaret Alice Seltzer 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.

[7] Since Seltzer was ordered to complete and pass a course of the State Bar's Ethics School in her prior matter, we do not recommend it here. Similarly, since she was 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 her prior matter, we do not order it again in these proceedings.

VIII. 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.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.