STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

JAY ALLEN PETERSON

A Member of the State Bar

[No. 87-O-17586]

Filed May 30, 1990; as modified, September 28, 1990

Motion denied, September 28, 1990 (see separate opinion, *post*, p. 83)

SUMMARY

Respondent failed to perform competently and abandoned his client's interests in three separate client matters, and failed to cooperate in the State Bar's investigation of his conduct. In addition, respondent deceived two clients about the status of their cases. After considering the lengthy time period over which respondent's misconduct occurred, the extensive deceit he practiced on his clients and the harm he caused them, his failure to participate in the State Bar Court proceedings, and the lack of any significant mitigation, the review department adopted the referee's recommended discipline, consisting of three years stayed suspension, three years probation, and one year of actual suspension. (Maynard D. Davis, Hearing Referee.)

COUNSEL FOR PARTIES

For Office of Trials: Russell G. Weiner

For Respondent: No appearance (default)

HEADNOTES

[1 a, b] **221.00 State Bar Act—Section 6106**
Attorney's repeated acts of deceit to clients in falsely representing that attorney had filed suit on clients' claims constituted acts of moral turpitude.

[2] **270.30 Rule 3-110(A) [former 6-101(A)(2)/(B)]**
277.20 Rule 3-700(A)(2) [former 2-111(A)(2)]
844.11 Standards—Failure to Communicate/Perform—No Pattern—Suspension
Attorney's failure to perform legal services as agreed, and abandonment of three clients, constituted very serious misconduct.

Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

[3] **521 Aggravation—Multiple Acts—Found**
535.10 Aggravation—Pattern—Declined to Find
842.51 Standards—Failure to Communicate/Perform—Pattern—No Disbarment
844.11 Standards—Failure to Communicate/Perform—No Pattern—Suspension
Abandonment of three clients did not constitute a pattern of abandonment, but did constitute multiple acts of severe disregard of clients' interests.

[4] **221.00 State Bar Act—Section 6106**
541 Aggravation—Bad Faith, Dishonesty—Found
601 Aggravation—Lack of Candor—Victim—Found
833.90 Standards—Moral Turpitude—Suspension
Attorney's repeated, protracted deceit of clients, which had effect of forestalling them from discovering true status of their matters, was perhaps even more serious than harm caused by attorney's inattention to client duties. An attorney's practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession.

[5] **213.90 State Bar Act—Section 6068(i)**
Attorney's failure to participate in State Bar's investigation of misconduct was a clear breach of attorney's legal and ethical duties.

[6 a, b] **833.90 Standards—Moral Turpitude—Suspension**
844.11 Standards—Failure to Communicate/Perform—No Pattern—Suspension
844.12 Standards—Failure to Communicate/Perform—No Pattern—Suspension
844.13 Standards—Failure to Communicate/Perform—No Pattern—Suspension
Where respondent's misconduct occurred over a period of time, included extensive deceit practiced on clients, and caused harm and expense to clients, and where respondent failed to participate in State Bar proceedings and there was no significant mitigation, appropriate recommended discipline for abandonment and deception of three clients plus failure to cooperate with State Bar investigation was three years stayed suspension, three years probation, and one year of actual suspension.

[7] **107 Procedure—Default/Relief from Default**
172.19 Discipline—Probation—Other Issues
1099 Substantive Issues re Discipline—Miscellaneous
Review department recognized that respondent's default raised concerns regarding respondent's suitability for probation, but concluded that respondent should not be denied opportunity to comply with probation terms which would appear to have rehabilitative benefit.

ADDITIONAL ANALYSIS

Culpability

Found

213.91 Section 6068(i)
221.11 Section 6106—Deliberate Dishonesty/Fraud
270.31 Rule 3-110(A) [former 6-101(A)(2)/(B)]
277.21 Rule 3-700(A)(2) [former 2-111(A)(2)]

Not Found

213.15 Section 6068(a)
220.15 Section 6103, clause 2

Aggravation

Found

582.10 Harm to Client

591 Indifference

Mitigation

Found but Discounted

710.53 No Prior Record

Discipline

1013.09 Stayed Suspension—3 Years

1015.06 Actual Suspension—1 Year

1017.09 Probation—3 Years

Probation Conditions

1022.10 Probation Monitor Appointed

1024 Ethics Exam/School

OPINION

STOVITZ, J.:

Jay Allen Peterson ("respondent"), a member of the State Bar since December 1977 and with no prior record of discipline, was found culpable by a referee of the former, volunteer State Bar Court[1] of professional misconduct showing that he abandoned three client matters between 1984 and 1987, deceived two of those three clients as to the status of their matters and failed to participate in the State Bar investigation into the complaints. Upon recommendation of the State Bar examiner ("examiner"), the referee recommended that respondent be suspended from practice for three years, stayed on conditions of a three-year probation with actual suspension for the first year of that probation.

As this opinion will explain, the principal issue in this matter is the appropriate degree of discipline to recommend. Since our review of the record is independent (Trans. Rules Proc. of State Bar, rule 453(c)), we shall make more detailed findings in some areas than did the hearing referee, while agreeing with his essential findings of fact. As required by our Supreme Court, we will then adopt the appropriate conclusions and relate them to our findings. Finally, we shall recommend the same basic degree of discipline recommended by the referee.

1. PROCEDURAL BACKGROUND.

On January 19, 1989, the State Bar's Office of Trial Counsel started this formal disciplinary proceeding by filing in the State Bar Court a notice to show cause. (Trans. Rules Proc. of State Bar, rule 550.) As prescribed, it was served on respondent by certified mail on his State Bar record address at the time. (See exhs. 1-2; declarations of service attached to notice to show cause dated January 23 and March 6, 1989; Bus. & Prof. Code, § 6002.1 (c).) Although warned in the notice that his default could be entered and the charges admitted if respondent did not timely file an answer to the notice to show cause, respondent failed to file an answer, his default was entered and the charges against him were deemed admitted. (Trans. Rules Proc. of State Bar, rules 552, 552.1(c).)

On June 20, 1989, the referee held a formal hearing on the charges. He received documentary evidence offered by the examiner including six declarations under penalty of perjury of clients, their subsequent counsel or State Bar investigators relating to the charges against respondent. After determining that respondent was culpable of professional misconduct, the referee invited the examiner to offer a recommendation as to discipline. (R.T. p. 14.) The examiner suggested a three-year stayed suspension on conditions including a one-year actual suspension. While initially expressing great concern over the apparent inadequacy of that recommendation, particularly as it squared with the evidence of harm to clients and the duration of respondent's misdeeds,[2] the referee ultimately concluded that harsher discipline would not likely be imposed either by us or the Supreme Court (R.T. pp. 21-22) and he followed the examiner's recommendation.

As expected, the examiner did not seek review of the referee's decision. Nevertheless, as part of the transition to the new State Bar Court system and under rules adopted by the State Bar Board of Governors, effective September 1, 1989, this review department created by Business and Professions Code section 6086.65 and appointed by the Supreme Court, must independently review the record of all such matters considered by former referees of the State Bar Court and assigned to this department after September 1. (Trans. Rules Proc. of State Bar, rules

1. See Bus. & Prof. Code, § 6079, eff. prior to July 1, 1989.

2. The referee stated as follows: "I'm not sure that if I were sitting at [the examiner's] end of the table that I would make a recommendation with quite the degree of generosity you have. I understand and I recognize that the offenses that have been committed by [respondent] are not the most heinous that we've seen coming before the courts.... But this is a man who has a course of conduct for three years, perhaps, that we're aware of, of ignoring clients and lying to clients and jeopardizing clients, and has in this case, at least as to the Meadows case and also the last matter, where the man's credit has been messed up as a result of [respondent], and I get very disturbed by this type of conduct, and I'm not sure why a man like this should be allowed to practice." (R.T. pp. 19-20.)

109 and 452(a).) After we reviewed this matter initially "ex parte," we notified the examiner that we had decided to set this matter for oral argument on our own motion. We invited the examiner to address the issue of whether the discipline recommended was adequate and we cited the then recently-filed decision of *Pineda* v. *State Bar* (1989) 49 Cal.3d 753 as an example of our concern. In response, the examiner argued that the discipline recommended by the referee was within an acceptable range for the respondent's offenses as measured by the Standards for Attorney Sanctions for Professional Misconduct and decisional law of the Supreme Court. However, the examiner submitted that this would not militate against still greater discipline.

2. FINDINGS AND CONCLUSIONS.

We first set out the appropriate findings and conclusions which should follow from the charges and record. While supporting the essential findings of fact of the hearing referee, we believe that the record permits us to make the slightly more detailed findings which follow:

a) Meadows Matter—Marriage Dissolution.[3]

In February 1984, Murl Meadows hired respondent to represent him in getting his marriage dissolved. Meadows paid respondent's fee of $400. In March 1985 Respondent represented Meadows at a dissolution trial and the court ordered the decree of dissolution granted.

Respondent promised to prepare the decree for the judge's signature in a few days. He did not do so and Meadows, who could not get an answer from respondent and who apparently moved to Oklahoma, hired an Oklahoma law firm ("new counsel") to try to find out what happened. In 1987, respondent promptly answered new counsel's first letter by asking that Meadows sign an "authorization for release of information." Meadows did so and new counsel returned it to respondent but he ignored the merits of the status request and two more letters from new counsel. Finally, new counsel wrote directly to the San Luis Obispo County Clerk and learned that no final judgment of dissolution had ever been entered for Meadows.

In January 1989 Meadows died and new counsel expressed concern to the State Bar that respondent's inaction in getting Meadows' divorce finalized would complicate the probate of Meadows' estate.

From the foregoing findings showing respondent's agreement to perform services, coupled with his persistent refusal either to complete the promised services over several years or to communicate adequately with Meadows or his new counsel, we conclude that respondent wilfully violated (former) rules 2-111(A)(2) and 6-101(A)(2), Rules of Professional Conduct,[4] but we decline to adopt the referee's conclusion that respondent also violated Business and Professions Code sections 6068 (a) and 6103. (*Sands* v. *State Bar* (1989) 49 Cal.3d 919, 931; *Baker* v. *State Bar* (1989) 49 Cal.3d 804, 815.)

b) Hailey Matter—Auto Purchase Dispute.[5]

In March 1984, James Hailey hired respondent to represent him in a dispute with a local auto dealership about the performance of a car Hailey had purchased there. Respondent agreed to take the case on a contingent fee basis and Hailey gave him all the papers (auto contract, repair bills, etc.). Respondent attended a meeting with Hailey and the auto maker's zone representative and Hailey thought the matter could be settled. Then the prospect of settlement fell through and respondent agreed to file suit.

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3. In addition to the charges deemed admitted, the findings in this count were established by exhibits 3 (declaration of Oklahoma lawyer Billie Mickle) and 4 (statement of respondent's client, Murl Meadows).

4. Unless noted, all references to the Rules of Professional Conduct of the State Bar are to the former rules in effect between January 1, 1975, and May 26, 1989 and which apply to respondent's conduct. (See *Walker* v. *State Bar* (1989) 49 Cal.3d 1107, 1113, fn. 3.)

5. In addition to the charges deemed admitted, the findings in this count were established by exhibits 7 (declaration of James Hailey) and 8 (declaration of Roy A. Hanley, Esq.).

At least two or three times thereafter, respondent misrepresented to Hailey that suit had been filed but due to crowded courts, cases were not being assigned for trial. Meanwhile,[6] on respondent's advice, Hailey stopped making monthly finance payments on the car. As a result, the creditor reported to a credit bureau that Hailey was delinquent and that hurt Hailey in getting other credit. During this time respondent did write a few letters to some creditors explaining the reason why Hailey stopped making payments, but he never wrote to the credit bureau despite promising to do so.

In late 1987—three and one-half years after hiring respondent—Hailey hired another lawyer. Hailey's new counsel found out that no suit had been filed and Hailey's many efforts to make an appointment with respondent were not successful. In early 1988, Hailey spotted respondent in the local area and he was able to talk to him. During that meeting, respondent admitted that he had never filed suit.[7] After this chance meeting with respondent, Hailey never heard from respondent. Hailey was unable to recover his papers from respondent. Hailey's cause of action against the auto dealership was barred by the statute of limitations. The creditor sold Hailey's vehicle and his credit was hurt.

From the foregoing findings showing respondent's agreement to perform services in this matter, coupled with his persistent refusal either to file and pursue the promised lawsuit over several years or to communicate adequately with Hailey or his new counsel, we conclude that respondent wilfully violated (former) rules 2-111(A)(2) and 6-101(A)(2), Rules of Professional Conduct, but we decline to adopt the referee's conclusion that respondent also violated Business and Professions Code sections 6068 (a) and 6103. (*Sands* v. *State Bar* (1989) 49 Cal.3d 919, 931; *Baker* v. *State Bar* (1989) 49 Cal.3d 804, 815.) **[1a]** However, based on the findings showing respondent's repeated acts of deceit to Hailey that he had filed suit when he had not done so, we conclude that respondent violated Business and Professions Code section 6106.

c) Sommers Matter—Another Auto Purchase Dispute.[8]

In August of 1987, Frank Sommers hired respondent over a dispute he was having with a local auto dealer because his vehicle gave him "nothing but problems" since he bought it in 1986. Since Sommers was starting a new business, he needed a reliable vehicle and respondent was aware of Sommers's needs. Sommers paid respondent a $25 consultation fee. Respondent was to bill Sommers for the (unspecified) balance, which would not exceed about $1,000 if Sommers lost at trial. Respondent agreed to do all work needed to resolve the matter, including filing suit. After the first conference, Sommers met with respondent a few more times to discuss the case and Sommers signed a blank form of verification which respondent told Sommers he would file with a complaint in civil court. Sommers followed respondent's advice to return the vehicle to the dealer and cancel Sommers's auto insurance policy on it.

After mid-1987, respondent told Sommers he had filed suit but one of the defendants was hiding behind the "corporate veil" and would have to be served through the state "attorney general's" office. In January of 1988 respondent told Sommers the defendants just answered the suit and Sommers should hear something from the court in "a couple of weeks".[9] Later in 1988 respondent told Sommers there was a delay in the court process but a court date should be set soon. Finally, Sommers personally checked with the court in which respondent said his case was filed

6. The period of time involved here is not clear.

7. According to Hailey's declaration, in early 1988, when respondent admitted he never filed suit, he told Hailey if he wished to sue respondent, he (respondent) could guarantee that Hailey would win and respondent would consider settling with Hailey for $4,000 but would also consider filing for bankruptcy. (Exh. 7.)

8. In addition to the charges deemed admitted, the findings in this count were established by exhibits 5 (declaration of Frank Sommers) and 6 (declaration of Robert B. Lilley, Esq.).

9. All of these contacts were initiated by Sommers.

and found nothing. When Sommers asked respondent about this, respondent said the court made a mistake and respondent would "fix it."

In March 1988 having gotten nothing more from respondent, Sommers went to respondent's office. Respondent's secretary told Sommers he (respondent) didn't have time to handle his case. Sommers hired new counsel and it took him three letters and three months (with Sommers personally "chas[ing] down" respondent) to get the files. When he did get the files, he found them very sketchy with only drafts of complaints and an unserved notice of rescission of contract. In the file, he saw no copies of correspondence, no receipts, no court case number and no record of expenditures or time spent on the case. Respondent's inaction hurt Sommers's and his new counsel's efforts to prevail. Sommers had to rent or borrow another vehicle since he left his with the auto dealer. Further, the California "lemon law"[10] changed for the worse.

From the foregoing findings showing respondent's agreement to perform services in this matter, coupled with his persistent refusal either to file and pursue the promised lawsuit over several years or to communicate adequately with Sommers or his new counsel, we conclude that respondent wilfully violated (former) rules 2-111(A)(2) and 6-101(A)(2), Rules of Professional Conduct, but we decline to adopt the referee's conclusion that respondent also violated Business and Professions Code sections 6068 (a) and 6103. (*Sands* v. *State Bar* (1989) 49 Cal.3d 919, 931; *Baker* v. *State Bar* (1989) 49 Cal.3d 804, 815.) **[1b]** As in the *Hailey* matter, *ante*, based on the findings showing respondent's repeated acts of deceit to Sommers that he had filed suit when he had not done so, we conclude that respondent violated Business and Professions Code section 6106.

d) Failure to Cooperate With or Participate in State Bar Investigations.[11]

Between March and August, 1988, a State Bar investigator sent respondent a total of four letters inquiring about the complaints in each of the three matters discussed above. Each letter was sent by first class mail to respondent's official State Bar address, each letter called attention to Business and Professions Code section 6068 (i) (duty to cooperate and participate in State Bar investigation), none of the letters were returned to the State Bar undeliverable and none were answered by respondent.

From the foregoing findings showing respondent's failure to cooperate or participate in the State Bar investigation in these matters, we conclude that respondent wilfully violated Business and Professions Code section 6068, subdivision (i). For the reasons earlier stated, we decline to conclude that respondent violated section 6103 of that code.

3. DEGREE OF DISCIPLINE.

The findings and conclusions we have adopted show very serious misconduct on respondent's part. **[2]** In three matters, he agreed to perform services, performed some services in two of them but ultimately abandoned his clients' interests in all three. By itself, this misconduct is very serious. (*Gadda* v. *State Bar* (1990) 50 Cal.3d 344, 355; *Matthew* v. *State Bar* (1989) 49 Cal.3d 784, 790-791.) **[3]** While respondent's misdeeds do not constitute a pattern of abandonment (*Levin* v. *State Bar* (1989) 47 Cal.3d 1140; see standard 2.4, Standards for Attorney Sanctions for Professional Misconduct ("std.")), they do constitute multiple acts of severe disregard of clients' interests. Under standard 2.4(b), reproval or suspension is appropriate, depending on the extent of the misconduct and degree of harm to the client. Here, each client found it necessary to retain new counsel to attempt to complete the matters entrusted to respondent and respondent did not cooperate with new counsel in any of the three matters; although, he belatedly turned over Sommers's file after considerable effort by the client. Each client suffered harm because of respondent's abandonments.

[4] Perhaps even more serious than the harm caused by respondent's inattention to his client duties was his dishonesty in the *Hailey* and *Sommers*

10. See Civil Code section 1793.2, subdivision (e), governing the buyer's rights when a warrantied new motor vehicle cannot be repaired after a reasonable number of attempts.

11. In addition to the charges deemed admitted, the findings in this count were established by exhibit 9 (declaration of State Bar investigator Chris Staackmann).

matters. Respondent's deceit was repeated and protracted in both matters. Whether or not it was calculated to do so, it had the effect of forestalling these two clients from discovering the true status of their matters. In *Stanley* v. *State Bar* (1990) 50 Cal.3d 555, 567, the Court recently described the attorney's practice of deceit as "inimical to high ethical standards of honesty and integrity required of members of the legal profession and to promoting confidence in the trustworthiness of members of the profession." The applicable portion of the Standards for Attorney Sanctions for Professional Misconduct in this area provides for disbarment or actual suspension depending on several factors: the magnitude of the dishonesty, the extent of harm or misleading and the extent to which related to the practice of law. (Std. 2.3.) Respondent deceived his clients while handling their matters and the deception apparently forestalled their discovery of his inaction, injuring their legal position.

[5] Finally, it was respondent's legal and ethical duty to participate in the State Bar investigation of these matters. (Bus. & Prof. Code, § 6068 (i); *Hipolito* v. *State Bar* (1989) 48 Cal.3d 621, 627, fn. 2.) His failure to do so is a clear breach of his duties as an attorney.

We see no clearly mitigating circumstances. Respondent practiced for only about six years when he commenced his client abandonment and misrepresentations. That misconduct spanned over three years. Since he failed to participate in these proceedings, he has not presented any other mitigating evidence and we see none in our own record review. Rather, we find aggravating, as did the hearing referee (decision, p. 5), that the record shows multiple acts of wrongdoing by respondent. (Std. 1.2(b)(ii).) We also find that respondent's misconduct significantly harmed clients (std. 1.2(b)(iv)), he showed indifference to his clients for the consequences of his misconduct (std. 1.2(b)(v)) and he displayed a lack of candor and cooperation to his victims. (Std. 1.2(b)(vi).)

Discipline for offenses somewhat similar to respondent's has varied widely in recent decisions.

In *Gold* v. *State Bar* (1989) 49 Cal.3d 908, the attorney was found culpable of two matters of failing to perform services and failing to communicate properly with his clients with deceit in one of the matters. He had no prior record of discipline in 25 years of practice. A four-member Supreme Court majority imposed a three-year suspension stayed on conditions including 30 days actual suspension. Three members of the Court would have followed the State Bar Court's recommendation of 90 days actual suspension.

In *Carter* v. *State Bar* (1988) 44 Cal.3d 1091 the attorney was found culpable in two separate matters of abandonment in one of the matters and improper withdrawal in the other with misrepresentations. He had received a prior public reproval. The Court imposed a two-year suspension, stayed, on conditions including six months actual suspension.

In *Levin* v. *State Bar, supra*, 47 Cal.3d 1140 the attorney was found culpable of two matters involving deceit. One involved settlement of a client's injury claim without permission and failure properly to account for funds. He had no prior record in 18 years of practice. The Supreme Court ordered a three-year suspension, stayed on conditions, including a six-month actual suspension.

In *Slavkin* v. *State Bar* (1989) 49 Cal.3d 894 the attorney's misconduct involved two matters: one of abandonment and the other of deceit to get a loan. She had no prior record in 10 years of practice. The Supreme Court ordered a three-year suspension stayed, on conditions, including one year actual suspension and until rehabilitation is proven. The Court observed that the attorney's offenses occurred over a short time but were surrounded by alcohol and cocaine problems showing the need for closely supervised probation.

Finally, in *Pineda* v. *State Bar, supra*, 49 Cal.3d 753 the Court found the attorney culpable of misconduct in seven client matters over a ten-year period. The misconduct included misappropriation. The Court imposed a five-year suspension, stayed on conditions including a two-year actual suspension.

In that case, the presence of mitigating evidence led the Court to order suspension rather than disbarment. In the present case, unlike in *Pineda*, we do not find that respondent engaged in a pattern of misconduct, although we do find multiple, serious acts.

[6a] Balancing all appropriate factors and guided by the Supreme Court's decisions, we have concluded that the appropriate discipline to recommend is that chosen by the hearing referee: a three-year suspension, stayed, on conditions of probation which will include actual suspension for the first year.[12] **[7 - see fn. 12]** We also recommend that respondent comply with rule 955, California Rules of Court and pass the Professional Responsibility Examination within one year. **[6b]** In making this recommendation, we are influenced by the length of time over which respondent's misconduct occurred, the extensive deceit he practiced on his clients, the harm and expense caused them and his lack of participation in these proceedings, coupled with the lack of any significant mitigation on respondent's behalf.

4. RECOMMENDATION

For the reasons stated above, we recommend that respondent, Jay Allen Peterson, be suspended from the practice of law in the State of California for a period of three (3) years; that execution of the order for such suspension be stayed; and that respondent be placed upon probation for said period of three (3) years upon the following conditions:

1. That during the first year of said period of probation, he shall be suspended from the practice of law in the State of California;

2. That during the period of probation, he shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;

3. That during the period of probation, he shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Office of the Clerk, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of probation is less than 30 days preceding any of said dates, he shall file said report on the due date next following the due date after said effective date):

(a) in his first report, that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct since the effective date of said probation;

(b) in each subsequent report, that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period;

(c) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) hereof;

4. That respondent shall be referred to the Department of Probation, State Bar Court, for assignment of a probation monitor referee. Respondent shall promptly review the terms and conditions of his probation with the probation monitor referee to establish a manner and schedule of compliance, consistent with these terms of probation. During the period of probation, respondent shall furnish such reports concerning his compliance as may be requested by the probation monitor referee. Respondent shall cooperate fully with the probation monitor to enable him/her to discharge his/her duties pursuant to rule 611, Rules of Procedure of the State Bar;

5. During the period of probation, respondent shall maintain on the official membership records of the State Bar, as required by Business and Professions Code section 6002.1, his current office or other

12. [7] We have considered the referee's initial concern (see R.T. p. 22) as to whether probation would be appropriate in a case such as this where the respondent has not participated as a predictor of unwillingness to abide by probation. However, on this record, we do not believe this respondent should be denied the opportunity to comply with probation terms which would appear to have potential rehabilitative benefit for him. We also note that the referee made probation terms a part of his final recommendation and the State Bar examiner urges that we adopt that recommendation.

address for State Bar purposes and all other information required by that section. Respondent shall report to the membership records office of the State Bar all changes of information as prescribed by said section 6002.1.

6. That, except to the extent prohibited by the attorney-client privilege and the privilege against self-incrimination, he shall answer fully, promptly and truthfully to the Presiding Judge of the State Bar Court, his or her designee or to any probation monitor referee assigned under these conditions of probation at the Respondent's office or an office of the State Bar (provided, however, that nothing herein shall prohibit the respondent and the Presiding Judge, designee or probation monitor referee from fixing another place by agreement) any inquiry or inquiries directed to him personally or in writing by said Presiding Judge, designee, or probation monitor referee relating to whether respondent is complying or has complied with these terms of probation;

7. That the period of probation shall commence as of the date on which the order of the Supreme Court herein becomes effective; and

8. That at the expiration of said probation period, if he has complied with the terms of probation, said order of the Supreme Court suspending respondent from the practice of law for a period of three years shall be satisfied and the suspension shall be terminated.

We further recommend that within one year of the effective date of the Supreme Court's order in this case, respondent be required to take and pass the examination in professional responsibility prescribed by the State Bar and provide proof thereof to the Clerk of the State Bar Court.

Finally, we recommend that respondent be required to comply with the provisions of rule 955, California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days respectively, after the effective date of the Supreme Court's order in this case.

We concur:

PEARLMAN, P.J.
NORIAN, J.