

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED AUGUST 11, 2010

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)	Nos. 04-O-11970, 04-O-14219 (Cons.)
)	
EDGAR LOUIS BORNE III,)	OPINION ON REVIEW
)	
A Member of the State Bar.)	
_____)	

This is respondent Edgar Louis Borne III's fifth disciplinary proceeding. He requests review of a hearing judge's recommendation that he be disbarred for misconduct involving two clients in two separate matters. The hearing judge found in one matter that Borne did not perform with competence because he failed to respond to a marital petition, resulting in a default against his client. In the second matter, the hearing judge found that Borne committed an act of moral turpitude because he threatened to accuse his incarcerated client of perjury and to testify negatively against him during a parole hearing unless the client withdrew his State Bar complaint against Borne. The hearing judge also found that Borne failed to cooperate with the State Bar by not responding to an investigator's letters regarding the client's complaint.

Borne disputes the hearing judge's culpability findings and contends that the hearing judge wrongfully denied the admission of evidence about his rehabilitation. Borne also asserts that the hearing judge's disbarment recommendation is excessive and that two years' actual suspension is the appropriate discipline. The Office of the Chief Trial Counsel of the State Bar (State Bar) asks that we affirm the hearing judge's culpability findings and recommended discipline.

Upon our independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we modify certain culpability determinations and aggravation findings, but ultimately conclude that the hearing judge's disbarment recommendation is clearly and convincingly supported by the record, the Standards for Attorney Sanctions for Professional Misconduct¹ and the decisional law.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Borne was admitted to practice law in 1979, and he practiced criminal, civil, family, personal injury and probate law. These proceedings commenced on May 18, 2005, when the State Bar filed a Notice of Disciplinary Charges (NDC) in case number 04-O-14219. A second NDC was filed on July 28, 2005, in case number 04-O-11970, and the two matters were consolidated. After a three-day trial, the hearing judge filed his decision and order of inactive enrollment on September 9, 2009.²

A. THE GLASS MATTER (CASE NO. 04-O-11970)

1. Findings of Fact

In 2003, Wanda Glass filed an action in the South Central District of the Los Angeles Superior Court (South Central District) seeking a restraining order against her husband, Eardeal Glass. Valerie Whitworth represented her in that matter. While this case was pending, Eardeal filed a petition for dissolution in the Central District of the Los Angeles Superior Court (Central

¹Unless otherwise noted, all further references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

²The procedural history in this case spans five years and illustrates an unfortunate inefficiency in the State Bar discipline system. Case numbers 04-O-14219 and 04-O-11970 were commenced in May and July, respectively, of 2005. Borne filed his responses to the NDCs in June and August of 2005, and the matters were consolidated. Three years later, on October 15, 2008, the parties filed a Joint Stipulation of Facts. Trial began on October 22 and 23, 2008, but was continued for five months, concluding on March 27, 2009. The parties then filed posttrial briefs on April 20 and April 23, 2009. The hearing judge filed his decision on September 9, 2009, and Borne filed his request for review in October 2009.

District). On September 12, 2003, the South Central District Court granted Wanda's request for a restraining order and ordered Eardeal to bring the mortgage current on the family home or it would have to be sold.

Upon the recommendation of a mutual friend, Carolyn Daniels, Wanda hired Borne to represent her in the South Central District matter to prevent the forced sale of her home. She paid him \$2,500 in advanced fees. Borne prepared a substitution of attorney that he and Wanda signed on October 4, 2003. He then sent it to Whitworth, but she never returned it nor filed it with the court. Eardeal did not bring the mortgage current, and foreclosure was imminent. Given the situation, Borne decided that the best way to protect Wanda's home was to file a bankruptcy petition. Wanda initially agreed and Borne prepared the petition. However, Wanda then changed her mind as she "didn't feel that it was the right thing to do."

Wanda did not cooperate in selling the house, so Eardeal's attorney sought an ex parte order to enforce the court's September 12, 2003 order. Borne attended the ex parte hearing on October 10, 2003, but the court would not allow him to appear because Whitworth was still the attorney of record. Following the hearing, Borne spoke with Wanda about the order to sell the house. After that, Wanda moved without informing Borne of her new address or phone number.

In January 2004, Borne received a letter from Arthur Goldberg, an attorney representing Eardeal, advising that he had not received a response to the dissolution petition, and he intended to take Wanda's default if she did not file one within 15 days. Although Wanda had not retained him for the dissolution matter, Borne wrote to Goldberg, advising that he was in the process of substituting into the case and asking for additional time to respond to the dissolution petition. Goldberg never responded to Borne. In the meantime, Borne attempted to contact Wanda through Daniels, but she did not know Wanda's whereabouts.

Borne did not hear from Wanda until March 2004, after she received a copy of the request to enter default filed in the dissolution proceeding. He told her that he would need an additional \$2,000 to represent her in that matter, but Wanda refused to pay as she believed Borne had not earned the \$2,500 she previously advanced to him. On March 23, 2004, she sent him a letter requesting a refund of the \$2,500, but Borne refused because he had provided substantial legal services for her under their original agreement.³

2. Conclusions of Law

Count 1 – Failure to Perform with Competence

We find there is insufficient evidence to support the State Bar’s allegations in Count 1 that Borne violated Rules of Professional Conduct, rule 3-110(A)⁴ by intentionally, recklessly or repeatedly failing to perform competently in the Glass matter. Borne attempted to participate in the October 2003 ex parte hearing regarding the sale of the home, but, through no fault of his own, the court would not allow him to appear. Moreover, Borne made a reasonable attempt to forestall Goldberg’s effort to obtain a default judgment in the dissolution case by seeking more time to substitute into the case. Borne’s efforts to locate Wanda were unsuccessful, again through no fault of his own. Without knowing her whereabouts or having her authorization, Borne could not file a response to the dissolution petition or object to the entry of default. Accordingly, we do not consider Borne’s actions or inaction to constitute an intentional, reckless or repeated failure to perform competently.

³At trial, Borne submitted a timesheet that he reconstructed from Wanda’s file, showing \$7,075 in legal services rendered between September 2003 and March 2004.

⁴Unless otherwise noted, all further references to “rule(s)” are to the Rules of Professional Conduct.

Count 2 – Failure to Refund Unearned Fees (Rule 3-700(D)(2))

The hearing judge dismissed the allegations in Count 2 that Borne violated rule 3-700(D)(2) by failing to promptly return any unearned advance fees with prejudice, which we adopt. The record establishes that between September 2003 and March 2004, Borne performed significant legal services for Wanda justifying his retention of the advanced fee.

Count 3 – Moral Turpitude (Bus. & Prof. Code, § 6106⁵)

The State Bar alleged that Borne violated section 6106 by misrepresenting to Wanda that he had filed a substitution of attorney form. The hearing judge dismissed Count 3 with prejudice, finding no credible evidence that Borne had made such a misrepresentation. We agree and adopt his finding. Accordingly, we find no culpability in case number 04-O-11970.

B. THE TIATIA MATTER (Case No. 04-O-14219)

1. Findings of Fact

In August 2002, Tuafono Tiatia, who was incarcerated, complained to the State Bar about Borne’s representation of him in a criminal matter. The State Bar learned from this complaint that in October and November of 1999, Borne had appeared on Tiatia’s behalf at an eight-day trial in Los Angeles Superior Court while he was suspended for failure to pay his State Bar dues. Borne stipulated to holding himself out as entitled to practice, in violation of sections 6125 and 6126. On July 22, 2004, the Supreme Court ordered that Borne be suspended for two years, stayed, with three years’ probation and 90 days’ actual suspension in Case Number 02-O-13903. Just before the court entered its discipline order, Borne sent Tiatia the following letter on July 1, 2004:

You have really messed up this time! You think I messed up your life?
Well, you really did a number on mine. You should have taken the deal, now,

⁵Unless otherwise noted, all further references to “section(s)” are to the Business and Professions Code.

you may never get out of prison. In addition, I will accuse you of perjury if you continue to accuse me of wrongdoing.

The State Bar dismissed all of your allegations (lies), and your papers are woefully ill-written. The mercenary discipline imposed upon me by the Bar has nothing to do with the merits of your case. They don't give a damn about you. When are you going to wake up and realize that you need me? You are blowing your chances of parole. Guess what, they call the trial attorney for input at your parole hearings! If you want me to talk good for you, I'll have to really pray hard on it. I'll do that, but my prayers are often unanswered. It is going to take every Christian bone in my body not to speak ill of you! Dismiss this bull---- now or I will fight back against you! You will lose!

Your actions have negatively impacted my family and I am very upset about it. You should have taken the deal! I wish you no harm, but you are just sinking your own ship!! (Emphasis in original.)

Borne testified that he was angry when he sent the letter because Tiatia's complaint to the State Bar resulted in Borne's 90-day suspension. When he was asked at the trial if he thought his letter was threatening, he stated: "This is not a threat. . . This is my attempt at legal advice." When further questioned whether it was wrong to send such a letter, Borne stated that he was "intensely remorseful" about the wording, which he described as "unfortunate" and "rude," but not about the substance because he thought the letter "was in [Tiatia's] best interests."

Tiatia forwarded Borne's letter to the State Bar, prompting an investigation. On March 7 and March 25, 2005, the assigned State Bar investigator wrote to Borne for an explanation for the letter to Tiatia. The investigator advised Borne that his failure to respond could result in a violation of section 6068, subdivision (i). Borne left the investigator a voicemail message requesting a faxed copy of the letter to Tiatia. The investigator faxed a copy of that letter along with copies of her March 7 and March 25, 2005, letters to Borne. Borne did not respond.

Count 1 – Seeking Agreement to Withdraw State Bar Complaint (§ 6090.5 (a)(2))

The hearing judge correctly found that Borne's attempt to convince Tiatia to withdraw his State Bar complaint was not in connection with settlement of a *civil matter*, as required by

section 6090.5, subdivision (a)(2). (*In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170, 175-176; *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 748-749.) The State Bar does not challenge the hearing judge's finding. Therefore, Count 1 is dismissed with prejudice. However, our dismissal of Count 1 does not absolve Borne of his misconduct because the same acts alleged in Count 1 are also alleged in Count 2 as constituting moral turpitude. The appropriate resolution of this case does not depend on the number of rules of professional conduct or statutes that proscribe the misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

Count 2 – Moral Turpitude (§ 6106)

The State Bar charged in Count 2 that Borne committed acts of moral turpitude when he threatened to accuse Tiatia of perjury and to negatively influence his chance for parole if Tiatia continued his accusations of wrongdoing. In writing the threatening letter, Borne abused his position of trust with Tiatia, whose incarceration made him vulnerable. “The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed . . . is in a superior position to exert unique influence over the dependent party. [Citation.]” (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959.) Borne's threats constituted overreaching and acts of moral turpitude within the meaning of section 6106. (*Id.* at pp. 959-960.)

Count 3 – Failure to Cooperate (§ 6068, subd. (i))

The State Bar alleged that Borne failed to cooperate with its investigation, in violation of section 6068, subdivision (i). We find Borne culpable because he did not respond in writing to the State Bar's March 7 and March 25, 2005, letters, even though he was expressly warned that

failure to do so could result in additional disciplinary action by the State Bar.⁶ (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

C. AGGRAVATION AND MITIGATION

We determine the appropriate discipline in light of all relevant circumstances, including aggravation and mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) The State Bar must establish aggravation by clear and convincing evidence (std. 1.2(b)), while Borne has the same burden of proof for mitigating circumstances. (Std. 1.2(e).)

1. Aggravation

The hearing judge found that Borne committed multiple acts of misconduct (std. 1.2(b)(ii)) and he has a prior record of discipline, which were considered aggravating factors. (Std. 1.2(b)(i).) We do not adopt the finding in aggravation under standard 1.2(b)(ii) because the two instances of misconduct do not necessarily constitute multiple acts. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 646.)

However, we adopt the factor involving Borne's four prior records of discipline as very serious aggravation. (Std. 1.2(b)(i).) In his first disciplinary proceeding, his misconduct occurred in 1986 and 1989. Borne stipulated to the following misconduct in four matters involving six clients and several medical providers: (1) failing to perform competently, (2) moral turpitude for endorsing a medical provider's name on settlement drafts without authorization; (3) failing to provide an accounting to his clients; and (4) failing to promptly pay funds to a client upon request. The Supreme Court order dated June 10, 1994, placed Borne on

⁶Borne claims that he did in fact send a responsive letter to the investigator, but he could not produce it at trial and the State Bar had no record of it.

one year's stayed suspension and two years' probation, with conditions including a suspension for the first 30 days of probation.

In Borne's second disciplinary proceeding, by order dated July 7, 1994, the Supreme Court suspended him for two years, stayed, and placed him on two years' probation with conditions, including a suspension for the first 45 days of probation. Borne was disciplined for misconduct in five matters involving six clients (including two minors), which occurred in 1989, 1992 and 1993. His misconduct consisted of: (1) two counts of failing to communicate; (2) failing to perform competently; (3) failing to provide an accounting; (4) retaining disputed fees; (5) signing a release on a client's behalf without notifying the defendants; and (6) failing to update his membership address.

Borne was disciplined a third time for misconduct occurring in February 1995, when he was stopped by a police officer for driving under the influence of alcohol. He was ultimately convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level above .08%). Based on this conviction, by order dated June 5, 1997, the Supreme Court suspended him for 90 days, stayed, and placed him on probation for one year.

As discussed above, Borne's fourth discipline occurred in 2004 after he represented Tiatia during an eight-day trial while he was on suspension for nonpayment of his State Bar membership fees. On July 22, 2004, the Supreme Court ordered that Borne be suspended for two years, stayed, with three years' probation and 90 days' actual suspension.

We find an additional aggravating factor in that Borne fails to appreciate the serious consequences of his misconduct. (Std. 1.2(b)(v).) Although he is remorseful about the wording of his letter to Tiatia, he does not view it as threatening and still asserts that "[i]t is sound legal advice." But, as the hearing judge correctly explained: "[T]he things that you said in that letter

go to the core of what a lawyer should not say to their client. They're just not something that can be written off as inflammatory language.”

2. Mitigation

The record supports two mitigating factors. Five character witnesses testified on Borne's behalf to establish his good character in accordance with standard 1.2(e)(vi), including a judge, three attorneys, and Borne's wife from whom he was separated. The Honorable John T. Doyle has known Borne for about 37 years and testified that he has “never heard anyone to complain that [Borne] was dishonest or untruthful, or was a person of distasteful character, or an individual that could not be trusted. Actually, quite the contrary.” Attorney Mark H. Rademacher has known Borne for approximately 38 years and Borne “has never spoken to [him] about anything that suggested he has a dishonest bone in his body.” Borne is “someone who did his best for his clients.” Finally, Borne served as a mentor to Monica Ariel Mihell, who noted that he was “calm, professional, tried to stay on target with the case itself and give the client appropriate advice.” She testified that Borne is treated with “courtesy and respect” by the judges and clients he represents. We give serious consideration to the testimony of these witnesses because judges and attorneys have a “strong interest in maintaining the honest administration of justice.” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

In addition to this testimony, declarations from four business associates were admitted at trial, all of whom attested to Borne's “kindness” and “generosity.” The declarants also attested to his even temperament and his honesty. As one declarant stated: “My opinion of his reputation for honesty is above reproach or suspicion. He is virtually impossible to anger or push toward unreasonable acts.”

While the evidence of Borne's good character was significant, most of his witnesses were not familiar with the nature or full extent of his misconduct, as required by standard 1.2(e)(vi).

Thus, their testimony and declarations must be discounted, and we assign modest mitigation credit for Borne's demonstration of good character.

We agree with the hearing judge's finding that Borne presented credible evidence of his alcohol abuse and his steps toward sobriety. (Std. 1.2(e)(iv).) At trial, several witnesses, including Borne's wife, testified about his emotional and physical problems, which exacerbated his long-term struggle with alcohol addiction. Borne also submitted evidence of: (1) his admission to a Kaiser Permanente Facility for a four-day stay in September 2003; (2) a treatment plan from the Betty Ford Center for a 10-day period in December 2005; (3) an Evaluation Plan from the Lawyer Assistance Program (LAP) showing that Borne had applied to the program on August 4, 2005; and (4) logs from June 2006 through May 2008 showing his attendance at meetings of The Other Bar, LAP, church and Alcoholics Anonymous.

However, none of these records provided an evaluation of the extent of Borne's alcohol addiction or gave any indication of the status of his recovery. Also missing from these records is evidence establishing the relationship between his alcohol problems and his misconduct. As we observed in *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560, "our Supreme Court does require lawyers' claims in mitigation based on substance abuse to show adequate evidence of a causal connection between the abuse and misconduct and a meaningful and sustained rehabilitative period [citations]" Furthermore, Borne offered no expert testimony to establish that his disability is directly responsible for his misconduct. (Std. 1.2(e)(iv).)

Borne maintains that the hearing judge wrongfully excluded the testimony of his expert, Richard S. Sandor, M.D. We find that the hearing judge did not abuse his discretion in excluding Dr. Sandor's testimony because Borne failed to timely identify his expert and failed to

timely provide the State Bar with information about Dr. Sandor necessary for its preparation for trial.⁷

In order to remedy the lack of expert testimony about the causal connection between Borne's alcohol addiction and his misconduct, Borne filed in this court a Motion to Augment the Record; for Remand to Re-Open the Hearing, etc. The evidence Borne sought to present on appeal was a March 26, 2009, "Addiction Medicine/Psychiatric Evaluation" and a February 10, 2010 "Addendum" report from Dr. Sandor, who conducted a 90-minute initial interview and a 50-minute subsequent interview with Borne. Dr. Sandor was not Borne's treating physician and he offered no medical or factual basis specifically addressing Borne's "demonstrated fitness to practice law." (*In re Possino* (1984) 37 Cal.3d 163, 172.) Rather, the doctor's opinion was based on his assessment of the typical behavior of alcoholics in general. Moreover, in his report, Dr. Sandor relied on Borne's "own account" of his addiction and recovery to conclude that his misconduct "was in all likelihood exacerbated by his alcoholism."

On April 9, 2010, we denied Borne's motion, finding no good cause shown. But even if, *arguendo*, we were to consider Dr. Sandor's evaluation reports, they would not constitute such clear and convincing evidence in mitigation as to compel a lesser discipline. The Supreme Court has cautioned that psychiatric evaluations are "inherently unreliable" when they "merely reflect personal beliefs in [a respondent's] continued recovery, and are based exclusively upon

⁷On October 23, 2008, the hearing judge continued the trial until March 27, 2009. On February 23, 2009, Borne filed a Motion to Augment or Amend his Expert Witness List so that he could call Dr. Richard Sandor as an expert. The State Bar opposed the motion on the grounds that Sandor had not been identified as a witness in Borne's Pretrial Statement in accordance with rule 1223(g) of the Rules of Practice of the State Bar Court. The State Bar further opposed the Motion to Augment because Borne did not provide it with a description of the substance of Dr. Sandor's testimony or with any written reports prepared by Dr. Sandor, which the State Bar had requested.

conversations or interviews with him.” (*Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 663.) We accordingly assign only slight mitigative weight to Borne’s evidence of rehabilitation.

II. DISCIPLINE DISCUSSION

In determining the appropriate level of discipline, we look to the applicable standards for attorney misconduct as well as the case law for guidance. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) While the standards are merely guidelines and do not mandate the discipline to be imposed (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5), we afford them great weight to further the uniform application of disciplinary measures. (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

The standards applicable to acts of moral turpitude and failure to cooperate are 2.3 and 2.6(a), both of which provide for suspension or disbarment depending on the gravity of the misconduct. However, most relevant is standard 1.7(b), which provides for disbarment when an attorney has two or more prior disciplines.

Borne suggests that his 23-year disciplinary record does not reflect a common thread or a pattern of serious misconduct warranting disbarment under standard 1.7(b). A common thread or pattern of misconduct are factors that have been considered by the Supreme Court in applying standard 1.7(b). (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607 [std. 1.7(b) applied where prior discipline showed pattern of misconduct and indifference to court’s disciplinary orders]; *Gary v. State Bar, supra*, 44 Cal.3d at p. 829 [disbarment warranted for “pattern” of misconduct].) But, these factors are not *requirements* for disbarment. In fact, the Supreme Court has considered factors other than a pattern of misconduct in deciding whether to apply standard 1.7(b). (See, e.g., *Morales v. State Bar* (1988) 44 Cal.3d 1037, 1048 [std. 1.7(b) applied where no common thread but attorney showed no remorse and no compelling mitigation].)

Standard 1.7(b) expressly provides that the critical issue in deciding whether to deviate from the severe sanction of disbarment is if “the most compelling mitigating circumstances clearly predominate.” (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 113 [disbarment under std. 1.7(b) imposed where no compelling mitigation]; compare, *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781 [disbarment under std. 1.7(b) not imposed where compelling mitigation included lack of harm and no bad faith].) However, even in the absence of compelling mitigation, the Supreme Court has not in every instance ordered disbarment pursuant to section 1.7(b). (*Conroy v. State Bar* (1991) 53 Cal.3d 495 [one-year actual suspension despite lack of compelling mitigation].) Ultimately, we are guided by the Supreme Court, which does not apply standard 1.7(b) in a rote fashion. Rather, we “examine the nature and chronology of respondent’s record of discipline. [Citation.] Merely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case.” (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

In considering the facts and circumstances unique to this case, we conclude that disbarment is both warranted and necessary to protect the public, the courts and the profession. Despite Borne’s evidence of commendable progress toward rehabilitation from alcohol addiction, his mitigation evidence is not compelling nor does it clearly predominate over the strong evidence in aggravation. Given his extensive experience with the discipline system, Borne should have taken the utmost care in meeting his professional obligations and responding to the State Bar investigator. Instead, he wrote an excoriating and threatening letter to an incarcerated client while his previous disciplinary matter was still pending in the Supreme Court. Borne also failed to cooperate with the State Bar investigator even after she warned him of the consequences if he did not respond to her two letters. “Each of [the prior] disciplinary orders provided him an opportunity to reform his conduct to the ethical strictures of the profession.”

(*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Unfortunately, Borne’s disciplinary history demonstrates that he “appears unwilling or unable to learn from past professional mistakes.”

(*Barnum v. State Bar, supra*, 52 Cal.3d at p. 111.)

Borne contends that a two-year suspension is appropriate, particularly if he is subjected to an evidentiary hearing of his fitness to practice under standard 1.4(c)(ii). Given his extensive discipline history and his present lack of cooperation, we believe that a reinstatement proceeding after disbarment is the appropriate means for Borne to demonstrate his fitness to practice law.

III. RECOMMENDATION

We recommend that Edgar Louis Borne III, State Bar number 87315, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys licensed to practice.

We further recommend that he be ordered to comply with the provisions of California Rules of Court, rule 9.20 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 matter.

We further recommend that the State Bar be awarded costs in accordance with section 6086.10, which are enforceable both as provided in section 6140.7 and as a money judgment.

IV. ORDER

The order of the hearing judge below that Edgar Louis Borne III be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007,

subdivision (c)(4), shall continue in effect pending the consideration and decision of the Supreme Court on this recommendation.

EPSTEIN, J.

We concur:

REMKE, P. J.

PURCELL, J.