

FILED MARCH 7, 2012

**STATE BAR COURT OF CALIFORNIA**  
**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 11-PM-14692
	)	
JOHN LELAND DiFIORE,	)	OPINION
	)	
A Member of the State Bar, No. 136971.	)	
_____	)	

Respondent John Leland DiFiore seeks review of the hearing judge’s order revoking his disciplinary probation. Based on three probation violations, the hearing judge recommended that DiFiore be suspended for three years and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.<sup>1</sup> On review, DiFiore contends that he is not culpable of any probation violations, while the Office of Probation of the State Bar (Probation) asks us to affirm the hearing judge’s discipline recommendation.

Based upon our independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge that DiFiore committed three probation violations. But we find only two factors in aggravation (prior record and multiple acts), whereas the hearing judge found four. Ultimately, we decline to impose progressive discipline, finding that an additional three-year suspension would be punitive in nature, disproportionate to the sanctions imposed in similar cases, and unnecessary for public protection.

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<sup>1</sup> Unless otherwise noted, all further references to “standard(s)” are to this source.

Neither this matter nor DiFiore's prior discipline record involves any misconduct toward a client. Rather, his ongoing involvement in the discipline system stems primarily from his history of serious alcohol abuse and his inability to properly establish his rehabilitation. DiFiore already has been suspended for over four years for the underlying misconduct and will remain suspended until he establishes his rehabilitation from alcohol abuse and his fitness to practice – fundamentally the same conditions he failed to comply with in this probation revocation proceeding. We find that the goal of public protection will be satisfied by an additional suspension of one year and until DiFiore proves his rehabilitation, fitness to practice, and learning and ability in the law.

### **I. ISSUES ON REVIEW**

DiFiore argues that he should not be found culpable of any probation violations because: (1) he believed the Supreme Court's amended discipline order also amended his probation compliance due dates; (2) he is unable to pay for the mental and physical examination (with respect to substance abuse) required by his probation; and (3) his prior participation in the State Bar Lawyer Assistance Program (LAP) demonstrates his rehabilitation.

We find: (1) the Supreme Court's amended discipline order did not change the effective date of the original order; (2) DiFiore failed to provide financial evidence as to his inability to pay for the necessary physical and mental examination; and (3) his prior participation in the LAP neither demonstrates his rehabilitation nor satisfies his subsequent probation condition.

### **II. PRIOR RECORD AND ALCOHOL ABUSE**

Caught in the labyrinth of *prior* discipline procedures, DiFiore appears unwilling or unable to understand his *current* obligations. In an attempt to clarify the record, we recite the pertinent facts in some detail.

DiFiore was admitted to practice law in 1990 and has one prior record of discipline, which imposed the probation at issue. His discipline problems began in 2005, following a series of convictions for alcohol-related misconduct. We referred the following convictions to the hearing department to determine whether the facts and circumstances involved moral turpitude or other misconduct warranting discipline, and if so, to recommend the discipline:

<i>Statutory Violation</i>	<i>Criminal Conduct</i>	<i>Violation Date</i>
Vehicle Code § 23152(a) (misdemeanor) Vehicle Code § 23152(b) (misdemeanor) Vehicle Code § 14601.1(a) (misdemeanor)	DUI Driving with blood alcohol level .08% or greater Driving on a suspended license	02/27/05
Vehicle Code § 23152(a) (felony) <sup>2</sup> Vehicle Code § 23152(b)(felony) Vehicle Code § 20002(a) (misdemeanor) Vehicle Code § 14601.1(a) (misdemeanor)	DUI with three or more priors Driving with blood alcohol level .08% or greater with three or more priors Hit and run with property damage Driving on a suspended license	04/12/05
Vehicle Code § 23152(a) (misdemeanor) Vehicle Code § 23152(b) (misdemeanor) Vehicle Code § 14601.1(a) (misdemeanor)	DUI Driving with blood alcohol level .08% or greater Driving on a suspended license	04/28/05
Vehicle Code § 23152(a) (misdemeanor) Vehicle Code § 23152(b) (misdemeanor) Vehicle Code § 14601.1(a) (misdemeanor)	DUI Driving with blood alcohol level .08% or greater Driving on a suspended license	04/30/05
Vehicle Code § 23152(a) (felony) <sup>3</sup> Vehicle Code § 23152(b) (felony) Vehicle Code § 14601.2(a) (misdemeanor)	DUI with three or more priors Driving with blood alcohol level .08% or greater with three or more priors Driving on a suspended license for DUI with prior within five years	04/03/06

<sup>2</sup> Due to these felony convictions, DiFiore was placed on interim suspension effective October 26, 2005.

<sup>3</sup> We issued another interim suspension order, effective May 7, 2007.

<i>Statutory Violation</i>	<i>Criminal Conduct</i>	<i>Violation Date</i>
Vehicle Code § 20002(a) (misdemeanor)	Hit and run with property damage	12/01/06
Vehicle Code § 14601.2(a) (misdemeanor)	Driving on a suspended license for DUI with prior within five years	

After his convictions were referred to the hearing department, DiFiore asked to participate in the State Bar Court’s Alternative Discipline Program (ADP), which provides respondents an opportunity to seek treatment and establish rehabilitation from substance abuse or mental health problems while being monitored by the court.<sup>4</sup> As a condition of participation, DiFiore was required to enroll in the LAP, which provides the therapeutic support and treatment element of the rehabilitation process. DiFiore also stipulated with the Office of the Chief Trial Counsel of the State Bar that his criminal convictions did not involve moral turpitude but did constitute misconduct warranting discipline.<sup>5</sup>

On October 6, 2008, DiFiore was accepted into the ADP. As part of the program, he was placed on involuntary inactive status pursuant to Business and Professions Code section 6233.<sup>6</sup> On April 17, 2009, while DiFiore was still successfully participating in the ADP, the hearing judge vacated his involuntary inactive status because he had “shown his rehabilitation, present fitness to practice law, and present learning and ability in the general law by a preponderance of

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<sup>4</sup> The ADP offers a respondent the opportunity to receive less severe discipline if he admits to having committed misconduct, establishes a nexus between his substance abuse or mental health issue and the misconduct, and successfully completes the prescribed treatment. (Rules Proc. of State Bar, rules 5.382.) When the participant fails to comply with the terms of the ADP, he may be terminated from the program and more severe discipline may be imposed. (Rules Proc. of State Bar, rule 5.384.)

<sup>5</sup> The stipulation also included two non-criminal related violations: (1) rule 4-100(A) of the Rules of Professional Conduct for issuing three checks from his client trust account (CTA) for personal or business expenses in 2004; and (2) rule 9.20 of the California Rules of Court for filing his 9.20 declaration two months late following our interim suspension order in 2007.

<sup>6</sup> Shortly after his acceptance into the ADP, we granted DiFiore’s request to be relieved from our interim suspension orders. (See footnotes 2 and 3.)

the evidence.” In total, as a result of his interim suspension and ADP inactive enrollment, DiFiore was not entitled to practice law from October 26, 2005 to April 17, 2009.

In April 2010, DiFiore was terminated from the LAP for failing to comply with the program’s requirements. According to DiFiore, he had been receiving a loan from the LAP to pay for its services, which ended and left him with insufficient resources to continue in the program. He asserts that he was terminated solely because he could not pay for his continued participation. Since participation in the LAP is a condition of the ADP, the hearing judge terminated DiFiore from the ADP on September 2, 2010.

As a result of his termination from the ADP, DiFiore received the more severe level of discipline recommended by the hearing judge. In particular, the judge recommended that the Supreme Court suspend DiFiore for three years, execution stayed, and that he be placed on probation for three years with an actual suspension of two years and until he complied with standard 1.4(c)(ii). In addition to submitting quarterly reports and complying with all the conditions of his criminal probation, DiFiore was required to obtain a mental and physical exam as it related to his alcohol abuse. This condition was specifically aimed at assessing, monitoring and, if necessary, treating DiFiore’s alcohol abuse problem.

On March 24, 2011, the Supreme Court ordered the recommended discipline and DiFiore was suspended effective April 23, 2011. On May 12, 2011, DiFiore filed a motion seeking credit for the time he was on inactive status while his case was pending in the hearing department. The hearing judge granted the motion, in part, and clarified that DiFiore was entitled to credit for the three years he was on interim suspension from October 26, 2005 to October 30, 2008; however, he was not entitled to credit for the time he was inactively enrolled while participating in ADP (October 6, 2008 to April 17, 2009) since he did not successfully complete the program. On

June 27, 2011, the Supreme Court amended its order, crediting the time DiFiore spent on interim suspension toward the period of actual suspension.<sup>7</sup>

On July 15, 2011, Probation filed a motion to revoke DiFiore's probation based on his failure to comply with probation conditions. On July 25, 2011, DiFiore filed his opposition. On August 25, 2011, the hearing judge filed the order revoking DiFiore's probation and recommending that he be suspended for three years and until he complies with standard 1.4(c)(ii).

### III. PROBATION VIOLATIONS

Probation violations must be proven by a preponderance of the evidence. (Rules Proc. of State Bar, rule 5.311.) Bad faith or evil intent is not required to find culpability. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Rather, a general willingness to commit an act or permit an omission is sufficient. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Such willfulness does not require either knowledge of the probation provisions or that the attorney intended the consequences of his or her acts or omissions. (*Ibid.*) All that is necessary is "proof that [the attorney] intended the act or omission itself." (*Ibid.*) As analyzed below, DiFiore willfully violated three probation conditions.

#### A. DiFiore Violated Two Probation Conditions when He Failed to Timely File his First Quarterly Report

Pursuant to his probation conditions, DiFiore was required to fulfill his underlying criminal probation *and* confirm he had done so in his quarterly probation reports. On April 20, 2011, Probation sent DiFiore a reminder letter about his probation terms, conditions and compliance due dates. The letter indicated that DiFiore's first quarterly report was due July 10,

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<sup>7</sup> DiFiore is still suspended pursuant to this discipline order and will remain suspended until he files a petition in the hearing department and proves his rehabilitation, fitness to practice and learning and ability in the general law under standard 1.4(c)(ii).

2011. Although not addressed by the hearing judge, we find that DiFiore submitted the July quarterly report to Probation on or about July 18, 2011, eight days late.

As to filing the report late, DiFiore asserts that he thought – albeit mistakenly – the Supreme Court’s June 27, 2011 amended discipline order also amended the compliance due dates for his probation. He claims he sent the quarterly report once he learned that Probation did not agree with his interpretation. DiFiore states he is no longer on criminal probation but nonetheless confirmed his prior compliance in his July quarterly report.

We find the Supreme Court’s amended discipline order did not modify the effective date of the original order (i.e., April 23, 2011) or the obligations therein. Accordingly, DiFiore’s first quarterly report was due no later than July 10, 2011. By filing it on July 18, 2011, DiFiore failed to timely submit it, and also failed to timely declare under penalty of perjury that he complied with his criminal probation. The hearing judge correctly found DiFiore willfully violated these two probation conditions. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 149 [by failing to submit quarterly report with evidence of continued assistance from licensed psychologist or psychiatrist, respondent violated two probation conditions].) We recognize the nominal nature of these violations, and thus, focus our attention on the more significant violation regarding DiFiore’s substance abuse condition as discussed below.

**B. DiFiore Failed to Obtain a Mental and Physical Examination for Substance Abuse**

An additional probation condition required DiFiore to obtain a mental and physical examination with respect to substance abuse to address his history of serious alcohol abuse. DiFiore was ordered to undergo the examination by “a qualified practitioner approved by [Probation]” and was required to “comply with any treatment/monitoring plan recommended following such examination.” On May 23, 2011, DiFiore sent Probation a report from his doctor stating that he had a knee replacement in March 2011 and that he had recovered well. The

doctor also explained that DiFiore was “otherwise ... in good health.” On the same date it received the letter, Probation explained to DiFiore that the report was insufficient because Probation never approved his doctor and the report failed to address DiFiore’s mental and physical condition as it relates to his substance abuse issue.

On May 27, 2011, DiFiore advised Probation that he could not afford a mental examination, and in any case, he believed that he had already shown his fitness to practice when the hearing judge previously vacated his inactive status while he was in the ADP based on a specific finding that he was rehabilitated. On June 8, 2011, Probation sent DiFiore a letter stating that his doctor’s report was deficient and providing further guidance regarding the medical and physical examination requirement. Probation plainly advised him that he was out of compliance with that probation condition. DiFiore never submitted the proper mental and physical examination report. His failure to do so is a willful violation of his probation. (See *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 536-537 [even substantial compliance with probation condition is insufficient to avoid culpability].)

On review, DiFiore asserts numerous reasons he could not or did not have to satisfy the physical and mental examination probation condition. First, he claims that he was unable to comply because Probation mistakenly placed him on suspension, which made it impossible for him to work and pay for the examinations. DiFiore’s contention that Probation suspended him from practicing law is incorrect. The Supreme Court suspended DiFiore for “a minimum of the first two years of probation,” and further ordered that he remain suspended until he provides “proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general practice of law.” Although the Supreme Court’s amended discipline order gave DiFiore credit for the three years he was on interim suspension, it also clearly states that he must prove his rehabilitation “before his suspension will be terminated.” DiFiore has yet to file a



petition in the State Bar Court with supporting evidence to prove his rehabilitation. (Rules Proc. of State Bar, rule 5.400 et seq.) Consequently, he remains suspended from the practice of law.

Second, regarding DiFiore's alleged inability to pay for the mental and physical examination, if he could not comply, "he should have tried to have it modified." (*In the Matter of Broderick, supra*, 3 Cal State Bar Ct. Rptr. at p. 150.) Probation advised DiFiore to file such a motion, but he failed to do so. Nor did he provide the hearing department with any financial information demonstrating his lack of funds. We decline to consider his belated attempts to introduce such evidence on review.<sup>8</sup>

Finally, DiFiore asserts that he should not be required to have the examinations because he completed the LAP, which shows he has been rehabilitated. This misstates the record and his obligations pursuant to the Supreme Court's discipline order. First, the record shows DiFiore did not complete the LAP, but was terminated.<sup>9</sup> We recognize that in April of 2009, the hearing judge made a determination that DiFiore had "shown his rehabilitation, present fitness to practice law, and present learning and ability in the general law by a preponderance of the evidence." However, because he was later terminated from LAP and ADP, the physical and mental examination was necessary to determine if any *ongoing* treatment or monitoring was necessary. If DiFiore believed he no longer needed treatment, as previously stated, he was required to file a motion to modify his probation. We cannot condone DiFiore's decision to dispute the probation condition without properly seeking court relief.

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<sup>8</sup> On December 21, 2011, DiFiore filed a notice of filing of financial declaration and a motion for relief from various orders of the court. Finding no good cause, we decline to augment the record to include the financial declaration and deny his motion for relief.

<sup>9</sup> While his participation in the LAP and ADP may have bearing on his overall rehabilitation efforts, it does not provide the full picture. DiFiore is required to demonstrate that he has "undergone a meaningful and sustained period of rehabilitation." [Citation.] (*In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 299.) This would include any progress he made after he was terminated from the LAP until the time he files a petition to be relieved on his suspension under standard 1.4(c)(ii).

#### **IV. MITIGATION AND AGGRAVATION**

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

##### **A. No Factors in Mitigation**

The hearing judge found that DiFiore did not present any factors in mitigation. We agree.

##### **B. Two Factors in Aggravation**

Although the hearing judge found four factors in aggravation, we do not find that DiFiore showed indifference toward rectification or significantly harmed the administration of justice by failing to comply with his probation conditions. We conclude that Probation has established two factors in aggravation, which are detailed below.

###### **1. One Prior Discipline Record (Std. 1.2(b)(i))**

DiFiore's prior record of discipline underlies this probation revocation proceeding. He stipulated to the following misconduct between 2004 and 2006: (1) his criminal convictions constituted misconduct warranting discipline, (2) he willfully violated rule 4-100(A) of the Rules of Professional Conduct for comingling funds in his CTA, and (3) he failed to comply with rule 9.20 of the California Rules of Court as required under our interim suspension order. The aggravating factors included multiple acts of misconduct and a disregard of the law and safety of the public. The mitigating factors are that DiFiore had been licensed for 15 years without discipline, displayed candor and cooperation with the State Bar, was suffering from financial and emotional difficulties, and his misconduct did not affect a client. As discussed above, DiFiore

received a three-year suspension, stayed, and was placed on probation for three years with an actual suspension of two years and until he complies with standard 1.4(c)(ii).

**2. Multiple Acts of Misconduct (Std. 1.2(b)(ii))**

DiFiore's misconduct included multiple acts of wrongdoing. He failed to comply with three probation conditions. However, we give this factor minimal weight based on the nature and extent of the violations involving submitting his quarterly report eight days late.

**3. Indifference toward Rectification for Consequences of Misconduct (Std. 1.2(b)(v))**

The hearing judge found that DiFiore's failure to comply with his probation conditions after being reminded by Probation demonstrates indifference toward rectification. We disagree. As for the quarterly report, DiFiore filed it approximately one week late after learning of Probation's position regarding the due date. As for his substance abuse condition, based on the multiple pleadings filed in this court, DiFiore appears to have an ongoing misunderstanding of the discipline process and the requirements he must fulfill to regain active status. While we are concerned about his apparent inability to grasp his obligations, we believe his "fitness to practice" is more appropriately addressed in a standard 1.4(c)(ii) proceeding, rather than as an aggravating factor of his indifference toward rectification.

**4. Harm to Administration of Justice (Std. 1.2(b)(iv))**

Probation did not provide clear and convincing evidence that DiFiore's failure to comply with the conditions of his probation significantly harmed the administration of justice because it made it more difficult for the State Bar to appropriately monitor him. "[W]e do not believe that [DiFiore's] failures [to comply] should be considered as separate and independent bases of aggravation since, to a great extent, the harm was inherent in the probation violations and therefore is duplicative." (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 684.)

## V. APPROPRIATE LEVEL OF DISCIPLINE

The purpose of discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to maintain high professional standards and to preserve public confidence in the legal profession. (Std. 1.3.) No fixed formula exists for determining the appropriate level of discipline. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.)

Our discipline analysis begins with the standards “ ‘to promote the consistent and uniform application of disciplinary measures . . .’ [Citation.]” (*In re Morse* (1995) 11 Cal.4th 184, 206.)<sup>10</sup> In this case, we must consider whether progressive discipline is called for under standard 1.7(a). We conclude it is not.

The two-prong exception to standard 1.7(a)’s requirement of greater discipline for recidivist attorneys is not directly applicable since DiFiore’s prior discipline record is neither remote nor minimal. Even so, we cannot ignore that the his prior offenses did not involve any clients, primarily centered around his personal behavioral problems outside the practice of law, and occurred approximately six years ago. “Although the [s]tandards are important guidelines, it is well-established that they are not to be imposed in an inflexible manner. [Citations.]” (*In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 822.) We find that progressive discipline would be punitive in nature, inconsistent with prior case law, and

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<sup>10</sup> Two standards apply here. Since probation violations are not covered by a specific provision, standard 2.10 states that misconduct by violations not otherwise specified will result in reproof or suspension according to the gravity of the offense and/or harm, if any, to the victim. Standard 1.7(a) states that if an attorney found culpable of misconduct has a prior record of discipline, the discipline imposed must exceed that of the prior proceeding unless the prior offense was minimal in severity and remote in time. Since standard 1.7(a) provides for the more severe sanction, we will focus on it. (Std. 1.6(a) [sanction imposed shall be the more or most severe of the different applicable sanctions].)

ultimately, would not advance the fundamental purpose of attorney discipline - public protection. Thus, the compelling circumstances unique to this case warrant a lesser sanction than that called for under standard 1.7(a).

In probation cases, we consider the total length of stayed suspension that could be imposed as an actual suspension (three years) and the total length of actual suspension imposed earlier as a condition of probation (at least two years). (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) DiFiore's failure to obtain an examination is a significant probation violation as it directly relates to his underlying misconduct for his DUIs. Usually, "the greatest amount of discipline [is] merited for violations [of probation] which show a breach of a condition of probation significantly related to the misconduct for which probation was given." (*Ibid.*) Initially, DiFiore was suspended for three years from our interim suspension orders resulting from his convictions. In addition, he was not entitled to practice law for over six months while he participated in the ADP. When he was terminated from the ADP, the higher level of discipline was triggered and he was suspended again, effective April 23, 2011. In total, DiFiore has been suspended for over four years as a result of his alcohol-related offenses and his inability to prove his rehabilitation from alcohol abuse. *And he remains suspended under the previous discipline order until he can establish his rehabilitation.* Under these circumstances, it would be punitive to impose an additional three-year period of actual suspension for DiFiore's probation violations related to his continued failure to establish his rehabilitation.

Additionally, we find that "strict adherence to standard 1.7(a) would result in discipline far in excess of what would be warranted under the facts and circumstances of the current case and comparable case law." (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 93.) Sanctions imposed in other similar cases have resulted in less discipline than the three-year suspension called for under standard 1.7(a), ranging from 90-day to one-year

suspensions.<sup>11</sup> Thus, strictly applying the standard would undermine the explicit purpose of the standards – “to promote the consistent and uniform application of disciplinary measures . . .” [Citation.]” (*In re Morse, supra*, 11 Cal.4<sup>th</sup> at p. 206.)

Finally, the fundamental goal of DiFiore’s probation is to protect the public and the profession while he pursues his rehabilitation. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) We find that this goal will be accomplished by imposing an additional one-year period of suspension that will continue until he can demonstrate his rehabilitation pursuant to standard 1.4(c)(ii). Even after the one-year suspension, DiFiore will not be eligible to practice law until he provides sufficient evidence that the “conduct leading to the discipline . . . is not likely to be repeated.” (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 581.) It will be up to him to demonstrate, through expert testimony, that he has “undergone a meaningful and sustained period of rehabilitation” (*In the Matter of Terrones, supra*, 4 Cal. State Bar Ct. Rptr. at p. 299 [citation omitted]) “to ensure that his misdeeds will not continue.” (*Gary v. State Bar, supra*, 44 Cal.3d at p. 828.) As to his fitness to practice and the concerns raised in this proceeding by his apparent inability to grasp his obligations, he will be required to show that he is willing and able to understand and comply with court orders, including probation

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<sup>11</sup> *In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. 302 (six-month actual suspension imposed for violating probation condition to pay restitution which was directly related to attorney’s underlying misconduct of failing to obey court’s sanction order; aggravating factors included two prior records of discipline and no mitigating circumstances); *In the Matter of Parker* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 747 (90-day actual suspension imposed where attorney twice failed to submit satisfactory evidence of compliance with approved substance abuse recovery program; violation breached condition directly related to attorney’s one prior record of discipline resulting from his DUI conviction); *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81 (one-year actual suspension where attorney’s only prior discipline record was misconduct underlying probation revocation proceeding and violations included failure to timely file first quarterly report and make restitution, which was centrally related to prior discipline for misappropriation of settlement funds); cf. *Potack v. State Bar* (1991) 54 Cal.3d 132 (attorney who *defaulted* in probation revocation proceedings received two years’ actual suspension for filing untimely quarterly report that he failed to amend after receiving notice of its deficiencies; prior discipline record involved misconduct toward clients).

conditions. We recommend that DiFiore be suspended for one year and until he proves his rehabilitation, fitness to practice, and learning and ability in the law in a standard 1.4(c)(ii) hearing.

## VI. FORMAL RECOMMENDATION

We recommend that John Leland DiFiore's probation be revoked, and that he be suspended from the practice of law in the State of California for two years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first year of his probation and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law under standard 1.4(c)(ii).<sup>12</sup>
2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
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 9002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.
4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of 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.

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<sup>12</sup> We do not recommend that DiFiore be required to take a mental examination or seek treatment for his alcohol abuse. As he is subject to a standard 1.4(c)(ii) requirement, DiFiore has the burden to demonstrate with *sufficient evidence* that he has undergone a meaningful and sustained period of rehabilitation. He will not be entitled to practice until he satisfies this requirement. At the expiration of the recommended one-year period of suspension, DiFiore can file one petition to satisfy both the prior and current standard 1.4(c)(ii) requirement.

5. Within one year of the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE) requirement and he will not receive MCLE credit for attending Ethics School.
6. Subject to asserting applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
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 he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

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.

We do not recommend that DiFiore be ordered to take and pass the Multistate Professional Responsibility Examination since he is required to comply with this condition as part of his previous discipline order.

As DiFiore has been not entitled to practice law since April 23, 2011, we do not again recommend his compliance with the provisions of rule 9.20 of the California Rules of Court.

## **VII. ORDER OF INACTIVE ENROLLMENT**

The hearing judge properly ordered that DiFiore be involuntarily enrolled as an inactive member of the State Bar as required by Business and Professions Code section 6007, subdivision (d)(1), effective August 28, 2011. DiFiore's inactive enrollment continues and will be terminated in the future in accordance with Business and Professions Code section 6007,



subdivision (d)(2). Pursuant to subdivision (d)(3) of that same section, we also recommend that DiFiore receive credit for the period of time he will be inactively enrolled pursuant to the order.

REMKE, P. J.

WE CONCUR:

PURCELL, J.

EPSTEIN, J.