

Filed September 5, 2019

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

In the Matter of ) No. 17-J-03246  
 )  
STEVEN JAMES FOSTER, ) OPINION  
 )  
State Bar No. 130975. )  
\_\_\_\_\_ )

Respondent, Steven James Foster, was publically censured in a 2017 proceeding in which he agreed that he had committed professional misconduct in Colorado. He stipulated in the Colorado proceeding that obtaining a loan from a client without obtaining the client’s informed written consent and advising the client that he could obtain independent counsel violated the Colorado Rules of Professional Conduct. In this reciprocal disciplinary matter, in which Foster separately stipulated to culpable conduct, a State Bar Court hearing judge found that Foster’s misconduct in Colorado constituted a disciplinary violation in California, considered that this is Foster’s second discipline in California, and recommended discipline of a one-year stayed suspension.

Foster appeals, raising constitutional challenges to the California reciprocal discipline statute, as he has done previously in this court and in federal court. He also argues that, at most, he should receive a private reproof for his misconduct. The Office of Chief Trial Counsel of the State Bar (OCTC) has not appealed, and asks that we uphold the hearing judge’s discipline recommendation.

After independently reviewing the record under California Rules of Court, rule 9.12, we reject Foster's arguments, adopt the hearing judge's findings, and affirm her recommendation of discipline.

## **I. FACTUAL AND PROCEDURAL HISTORY**

Foster became licensed to practice law in California in December 1987<sup>1</sup> and in Colorado in May 1991. As discussed *post*, he has a prior record of discipline in California. In Case No. 10-J-03762, Foster received a public reproof as reciprocal discipline for misconduct in Colorado.

### **A. Foster's 2015 Misconduct in Colorado and Colorado Disciplinary Proceedings**

In the Colorado proceedings, Foster agreed to these facts: In early 2015, Foster was hired by Tom Brown to assist him with review of a special needs trust for his son. In October 2015, Foster asked Brown for a \$1,000 loan. On October 13, 2015, Foster executed a promissory note that provided an eight percent per annum interest rate, and would be due on November 13, 2015. Other than the promissory note, Foster did not prepare any other documents related to the loan. He did not advise Brown, in writing, that he could seek independent legal counsel on the transaction. Foster also did not receive Brown's informed written consent to the loan.

Foster did not pay Brown the principal and interest, as agreed, on November 13, 2015. On January 27, 2016, Brown e-mailed Foster requesting repayment. Foster replied on January 28, stating that he would get back to Brown the following Monday. On February 5, Brown emailed Foster again about repayment. Foster replied on February 19 that he should have the loan resolved by the next week. Foster repaid the loan on March 8, 2016, paying Brown \$1,100. On March 28, 2016, Brown filed a complaint with the Colorado Supreme Court, Office of Attorney Regulation Counsel.

---

<sup>1</sup> Foster resigned from the California bar without disciplinary charges pending in 2001. His membership was reinstated in 2005.

On March 14, 2017, Foster entered into a “Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct.” Foster acknowledged that he failed to abide by rule 1.8(a)<sup>2</sup> of the Colorado Rules of Professional Conduct and expressed remorse for having failed to do so. On April 28, 2017, the Colorado Supreme Court issued an order approving the stipulation and publicly censured Foster for his violation of rule 1.8(a), effective March 15, 2017.

**B. California State Bar Reciprocal Disciplinary Proceeding**

Based on the Colorado Supreme Court’s order of public censure, OCTC filed a Notice of Disciplinary Charges (NDC) on September 20, 2017, charging Foster with professional misconduct in a foreign jurisdiction under section 6049.1 of the California Business and Professions Code.<sup>3</sup> OCTC alleged that Foster’s Colorado misconduct constituted a violation of rule 3-300 of the California Rules of Professional Conduct.<sup>4</sup>

In this proceeding, the Colorado Supreme Court’s order of public censure is conclusive evidence that Foster is culpable of professional misconduct in California. (§ 6049.1, subd. (a).) Accordingly, the issues before the hearing judge below were limited to: (1) the degree of

---

<sup>2</sup> Rule 1.8(a) of the Colorado Rules of Professional Conduct provides that a lawyer shall not enter into a business transaction with a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

<sup>3</sup> Subsequent references to sections are to the California Business and Professions Code.

<sup>4</sup> All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise indicated. Rule 3-300 provides essentially the same proscription as rule 1.8(a), prohibiting lawyers from entering into business transactions with their clients unless the transactions are fair and reasonable to the client, fully disclosed to the client in writing, and the client gives informed written consent.

discipline to be imposed; (2) whether, as a matter of law, Foster's professional misconduct in Colorado would warrant discipline in California; and (3) whether the proceedings in Colorado lacked fundamental constitutional protection. (§ 6049.1, subd. (b)(1), (2), and (3).) Foster's burden was to establish that discipline is not warranted in California and that the Colorado proceedings lacked fundamental constitutional protections. (§ 6049.1, subd. (b).) Although Foster claimed that section 6049.1 violated his due process rights in its conclusivity of the Colorado culpability, he did not challenge the Colorado proceedings in his California disciplinary proceeding, and entered into an independent stipulation with OCTC on December 12, 2017, admitting essentially the same facts as he had agreed to in Colorado and that his misconduct constituted a willful violation of rule 3-300. Foster conceded in his trial brief that he violated two provisions of rule 3-300.

After a one-day trial on December 12, 2017, the hearing judge issued her opinion on February 15, 2018, finding that, pursuant to section 6049.1, the discipline issued against Foster in Colorado warranted imposition of discipline in California. Specifically, she found that Foster's conduct constituted a violation of rule 3-300, the Colorado proceedings did not lack fundamental constitutional protections, and Foster did not argue that they lacked such protections. Foster has not challenged the hearing judge's finding that his misconduct in Colorado constituted a violation of rule 3-300. In his supplemental brief, he admits that he has never disputed that he would be subject to discipline in California based on his Colorado misconduct.

### **C. Foster's Federal Lawsuit and Ninth Circuit Appeal**

On October 5, 2018, we abated proceedings in the Review Department pending resolution of Foster's federal court appeal. On April 17, 2017, Foster filed a complaint for declaratory and injunctive relief challenging the constitutionality of section 6049.1, arising from its use in his *prior* discipline proceeding in California, in the United States District Court for the

Northern District of California, in an action entitled *Steven J. Foster v. State Bar of California, et al.*, No. 17-cv-02122. On October 17, 2017, the district court dismissed the lawsuit with prejudice. Foster filed a notice of appeal with the Ninth Circuit Court of Appeals on November 15, 2017, in an action entitled *Steven J. Foster v. Tani G. Cantil-Sakauye et al.*, No. 17-17332. On December 3, 2018, the Ninth Circuit filed a memorandum decision affirming the district court's dismissal. The court ruled that dismissal of Foster's as-applied due process claim was proper because it was not prudentially ripe, but ordered that the dismissal should have been without prejudice. The court ruled that Foster's facial due process challenges were properly dismissed because Foster failed to allege facts sufficient to state a plausible claim, and since amendment was futile, the dismissal was properly entered without leave to amend. On December 17, 2018, Foster filed a petition for rehearing with the Ninth Circuit. On March 28, 2019, the court entered an order denying the petition for rehearing, and stating that "[n]o further filings will be entertained in this closed case." On May 23, 2019, we terminated our October 5, 2018 abatement order.

We now focus our review on the central issues raised on appeal: Foster's constitutional challenges to section 6049.1, aggravation, mitigation, and the appropriate level of discipline.

## **II. FOSTER'S CONSTITUTIONAL CHALLENGES**

Central to Foster's appeal is his claim that California's reciprocal discipline statute violates his right to due process. He argues that he cannot be disciplined under section 6049.1 because the statute precludes him from relitigating his Colorado discipline in a full hearing. Foster also contends that his inability to litigate his constitutional claims in federal court violates his due process rights. The hearing judge rejected Foster's constitutional challenges on the merits and OCTC agrees. We also reject Foster's constitutional claims as meritless.

**A. Foster’s Stipulation and Admissions in the Hearing Department Render Moot his Constitutional Claims**

Prior to trial in this proceeding, Foster stipulated unconditionally, as he did in the Colorado disciplinary matter, to facts which showed conclusively that he violated rule 3-300 in two respects. He also admitted these two violations in his trial brief, filed a day prior to his stipulation. Since Foster has stipulated to all of the facts establishing his culpability, he is bound by them at trial and on review. (E.g., *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1143; *Inniss v. State Bar* (1978) 20 Cal.3d 552, 555.)

In our view, Foster’s position renders his constitutional claims moot, because his factual stipulation and admissions conclusively establish his misconduct in California, regardless of the prescribed effect of discipline in another jurisdiction under section 6049.1. We would so hold even if California had never adopted a reciprocal discipline procedure and instead had relegated OCTC to pursuing the Colorado discipline by commencing an original disciplinary proceeding.

A familiar principle of appellate procedure is that an appeal cannot be pursued if its issues have become moot by subsequent acts or events. (9 Witkin, Cal. Procedure (5th ed., 2008) Appeal, § 749, p. 814.) By Foster’s stipulation and admission prior to trial that he violated rule 3-300 in two respects, he rendered moot the constitutional claims that he urges on review.<sup>5</sup>

---

<sup>5</sup> Although we acknowledge that an exception to the mootness doctrine on appeal is invoked where there are important questions of substantial and continuing public interest to deciding the appeal despite mootness, here Foster’s question is very narrow. (Compare, e.g., *Abbott Ford, Inc. v. Superior Court* (1987) 43 Cal.3d 858, 868 (fn. 8) [question of whether sliding-scale agreement represented good faith settlement of action to act as relief from certain liability]; *County of Madera v. Gendron* (1963) 59 Cal.2d 798, 804 [determination whether district attorney illegally engaged in private practice; appeal could be decided notwithstanding officeholder’s reelection defeat by competing candidate].)

**B. Even if Foster’s Constitutional Challenges Were Not Moot, He Could Timely Present Them in This Matter to the State Bar Court and California Supreme Court, Which Have Previously Found Them to be Meritless**

Foster’s constitutional challenges to section 6049.1 are without merit, even if they were not mooted by his stipulation. Contrary to his assertion, the constitutionality of section 6049.1 has been previously analyzed by this court. In Foster’s previous disciplinary proceeding (Case No. 10-J-03762), he also raised constitutional challenges to section 6049.1. In that matter, since we affirmed the reproof recommendation of the Hearing Department, which did not require Supreme Court approval, we found that we lacked jurisdiction to consider the challenges. Foster still appealed our decision by filing a Petition for Review, which was denied by the Supreme Court, upholding our disciplinary recommendation. (*In re Foster* (2014) petn. for review denied, S222423; *In re Rose* (2000) 22 Cal.4th 430, 446–447 [because Supreme Court has original jurisdiction to discipline attorneys, summary denial of petition for review is exercise of that jurisdiction and judicial determination on merits].)

In a separate matter, we found that section 6049.1 meets constitutional scrutiny and the Ninth Circuit has upheld the constitutionality of reciprocal discipline proceedings based on a state-imposed discipline.<sup>6</sup> The Supreme Court upheld our disciplinary recommendation in *Jenkins* after denying respondent’s Petition for Review. (*Jenkins on Discipline* (2001) petn. for review denied, S095827.) This denial is a judicial determination on the merits of the discipline recommendation and constitutional issues raised. (*In re Rose, supra*, 22 Cal.4th at pp. 446–447.)

---

<sup>6</sup> (*In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 162–164 [attorney’s claims that § 6049.1 unconstitutionally infringes on judicial power and is otherwise beyond legislative power are without merit—statute provides full opportunity to litigate whether underlying discipline should be conclusive in California disciplinary proceeding]; see also *In re Kramer* (9th Cir. 2002) 282 F.3d 721 [upheld constitutionality of reciprocal discipline proceeding in which district court issued order to show cause and held hearing on why discipline in New York should not result in disbarment in federal district court, stating that function of court seeking to impose reciprocal discipline is “far different” than court imposing discipline in first instance].)

Foster's argument that his due process rights are violated because he is barred from raising his constitutional challenges in federal court similarly lacks merit and is refuted by well-established law. The California Supreme Court's plenary jurisdiction over attorney discipline includes jurisdiction to review an attorney's constitutional challenges to the discipline process. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592; *In re Rose, supra*, 22 Cal.4th at pp. 447–448 [summary review of attorney's petition for review is full and adequate state court review of federal claims].) Even a summary denial of a petition by the Supreme Court is a judicial determination on the merits that provides due process. (*Hirsh v. Justices* (9th Cir. 1995) 67 F.3d 708, 713 [state judicial review of attorney disciplinary proceedings is inadequate from due process standpoint only where state procedural law bars presentation of federal claims, not where it provides for discretionary review that can be summarily denied]; *In re Rose, supra*, 22 Cal.4th at pp. 446–447.)

### III. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>7</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Foster to do the same to prove mitigation.

#### A. Aggravation for Prior Record of Discipline (Std. 1.5(a))

The hearing judge found aggravation for Foster's 2015 prior public reproof in Case No. 10-J-03762. In that matter, Foster was disciplined in California based on his misconduct in Colorado for (1) violating Business and Professions Code, section 6068, subdivision (c), by failing to maintain a legal or just action by re-filing and re-litigating a judicial bias claim during his sixth appeal of his divorce proceedings, and (2) violating Business and Professions Code, section 6068,

---

<sup>7</sup> Subsequent references to standards are to this source.



subdivision (g), by commencing an action for the purpose of harassing his ex-wife.<sup>8</sup> His misconduct was aggravated by lack of insight and mitigated by lack of prior discipline and cooperation. Foster does not challenge that he has prior discipline. His current misconduct occurred the year after our opinion was filed in his prior disciplinary matter, and, thus, he had ample opportunity to heed the import of his earlier discipline. We agree with the hearing judge and assign moderate weight in aggravation for Foster's prior discipline. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

**B. Foster Has Not Provided Clear and Convincing Evidence to Support Additional Mitigation**

The hearing judge properly assigned nominal weight in mitigation for Foster's stipulation to facts because those facts were easily provable. (*In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 888, 891.) Other than this mitigation, the hearing judge found none, stating that Foster did not present evidence in mitigation at trial. OCTC agrees that Foster did not present evidence in mitigation at trial. Foster asserts that, at trial, the hearing judge granted his request to present mitigation evidence in his trial brief and claims mitigation for "absence of any related prior misconduct," the fact that he was negligent in failing to advise his client, no harm, expression of remorse, remoteness in time of the loan transaction with his client to the present proceeding, and repaying the loan with an overpayment of interest. We note that on the day of trial the hearing judge told Foster she would consider statements in his trial brief to be what he would have testified to, but stressed that she would not accept every assertion as fact.

---

<sup>8</sup> Part of the Colorado record of Foster's disciplinary proceeding is a decision of Foster's 30-day stayed suspension imposed in 2005. This rested on Foster's verbal confrontation with his former spouse. He was given deferred sentences to a misdemeanor and a petty offense. The record is not clear on whether Foster's compliance with the Colorado court's deferred conditions resulted in dismissal of the convictions. However, there is no evidence that Foster was subject to discipline in California for this 2005 matter; and the parties proceeded in the California case as if the only prior discipline was the one identified in Case No. 10-J-03762. We followed this treatment of Foster's 2005 Colorado conviction and stayed suspension, and have given it no weight in aggravation.

Foster's trial brief lists mitigating factors as conclusions without reference to supporting evidence. As such, he failed to meet his burden to prove any additional mitigation by clear and convincing evidence.

#### **IV. LEVEL OF DISCIPLINE**

When recommending discipline for professional misconduct, our primary purposes are to protect the public, the courts, and legal profession, maintain high professional standards, and preserve public confidence in the legal profession. (Std. 1.1.) In arriving at an appropriate discipline, "we must consider the underlying conduct and review all relevant aggravating and mitigating circumstances. [Citation.]" (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932.)

We begin our discipline analysis with the standards that the Supreme Court instructs us to follow "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Although not binding, we give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations omitted.) We reject Foster's argument that we should look to the American Bar Association's standards, rather than the California standards, for guidance as to the appropriate level of discipline.

Standard 2.4 applies to violations of rule 3-300 and provides that suspension is the presumed sanction unless the extent of the misconduct and any harm it caused the client are minimal, in which case reproof is appropriate.

In addition, due to Foster's prior discipline, standard 1.8(a) applies. It provides "[i]f a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." The hearing judge found that Foster's prior misconduct does not fall within the exception to

standard 1.8(a).<sup>9</sup> We agree. Foster argues that the exception should apply because his prior misconduct in Colorado, which occurred in 2006, is remote in time and was not serious. We find that his prior discipline was serious, involving multiple violations based on filing frivolous appeals for the purpose of harassing his ex-wife, aggravated by lack of insight. Further, discipline imposed in 2014 based on misconduct committed in 2006 is not so remote in time from the current misconduct that it justifies not imposing a greater sanction for the second discipline. (See *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [prior record of discipline was not too remote in time to be considered as aggravating circumstance where it was imposed 14 years before imposition of discipline in more recent case and seven years before commission of misconduct in more recent case].) We also reject Foster's assertion that reproof is the appropriate sanction under standard 2.4 because the extent of his conduct and the harm to his client were minimal. We note that Foster stipulated in the Colorado proceedings that his misconduct caused actual harm to his client and that it was aggravated by dishonest or selfish motive.

The hearing judge properly considered and analyzed Foster's misconduct, the aggravation and mitigation, the standards, and case law to recommend a one-year stayed suspension as appropriate discipline. OCTC acknowledges that it sought a one-year stayed suspension at trial, and has not appealed, but submits that an actual suspension would be appropriate discipline. We disagree with Foster's argument that the discipline recommended should be a reproof, as in *Connor v. State Bar* (1990) 50 Cal.3d 1047, because although the misconduct in *Connor* is similar

---

<sup>9</sup> Foster incorrectly asserts that there are no disciplinary opinions in California where an attorney with one prior record of discipline has received an enhanced sanction. As required by standard 1.8(a), the recommended discipline for attorneys with one prior record of discipline is often increased over the prior discipline, unless the exception applies. (See, e.g., *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 496 [attorney with prior 90-day actual suspension received progressive discipline that included six-month actual suspension for falsely telling municipal court judge that he had subpoenaed a witness and for failing to cooperate with disciplinary investigation].)

to Foster's misconduct, the attorney there had no prior discipline. We agree with the hearing judge's analysis that other cases involving violations of rule 3-300 with recommendations of more discipline than a stayed suspension involved more serious misconduct. (See *Schneider v. State Bar* (1987) 43 Cal.3d 784 [30 days' actual suspension for rule 3-300 (former rule 5-101) violations and other violations in two incidents where attorney also attempted to conceal his misconduct]; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752 [60 days' actual suspension for rule 3-300 violation where attorney named himself as successor trustee, failed to advise clients to seek independent counsel, and failed to obtain informed consent].) We affirm the hearing judge's discipline recommendation as appropriate to protect the public and preserve public confidence in the profession.

## V. RECOMMENDATION

For the foregoing reasons, we recommend that Steven James Foster be suspended from the practice of law in the State of California for one year, that execution of that suspension be stayed, and that he be placed on probation for one year subject to the following conditions:

1. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Foster must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
2. Foster must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of his probation conditions.
3. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Foster must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. He must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
4. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Foster must schedule a meeting with his assigned probation case specialist to

discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the probation period, he must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

5. During Foster's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, Foster must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
  - a. **Deadlines for Reports.** Foster must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Foster must submit a final report no earlier than ten days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Foster must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
  - c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
  - d. **Proof of Compliance.** Foster is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

6. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Foster must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School. If he provides satisfactory evidence of completion of Ethics School after the date of this decision but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.
7. For a minimum of one year after the effective date of discipline, Foster is directed to maintain proof of his compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20(a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-delivery. Foster is required to present such proof upon request by OCTC, the Office of Probation, and/or the State Bar Court.
8. 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 probation period, if Foster has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

## **VI. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Foster be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If Foster provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

## VII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

STOVITZ, J.\*

WE CONCUR:

HONN, Acting P. J.

McGILL, J.

---

\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.