PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed March 29, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 15-O-14149
	)	
JOHN JOSEPH FUERY,	)	OPINION
	)	
State Bar No. 177634.	)	
	)	

While suspended from practicing law for failure to pay his 2015 State Bar membership fees, John Joseph Fuery appeared in court on behalf of a client and made a discovery request to a deputy district attorney. As a result of his actions, a hearing judge found him culpable of willfully engaging in the unauthorized practice of law (UPL) and that his actions involved moral turpitude. The judge recommended that Fuery be actually suspended for 60 days.

Fuery appeals. Notwithstanding his stipulation at trial that he committed the acts alleged in the first two counts of the Notice of Disciplinary Charges (NDC), he asserts that he is not culpable of misconduct because he was suffering from the effects of a brain tumor at the time and did not intentionally commit wrongdoing. He also asserts that the Office of Chief Trial Counsel of the State Bar's (OCTC) prosecution of this case was "political" and at the behest of the local district attorney. He further claims that the hearing judge's adjudication of the case was "slanted," and her decision contains "many incorrect" factual statements. OCTC does not appeal and supports the judge's decision.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we reject Fuery's arguments and, like the hearing judge, find him culpable of two acts of UPL, both involving moral turpitude. We affirm the judge's findings of facts and law, but disagree with the

weight she assigned to certain aggravating and mitigating factors. Nonetheless, we agree that a 60-day actual suspension is appropriate discipline.

I. PROCEDURAL BACKGROUND

On October 27, 2017, OCTC filed its NDC, charging Fuery with three counts of misconduct: UPL, moral turpitude regarding UPL, and failure to update his membership address. On February 21, 2018, trial commenced, and Fuery filed his pretrial statement. He also stipulated in open court to most of the facts set forth in OCTC's pretrial statement. Trial continued on February 22 and 23. On April 20, 2018, the hearing judge issued her decision.

II. FACTUAL BACKGROUND[1]

The facts here are straightforward and largely undisputed. In December 2014, the State Bar mailed Fuery's 2015 membership fees statement to the post office box listed as his membership records address.[2] After Fuery did not pay his annual fees by the deadline, the State Bar mailed a Final Delinquent Notice to his membership records address on March 6, 2015. The notice informed Fuery that he would be "suspended from the practice of law effective July 1, 2015[,]" if his payment was not received by June 30, 2015. The notice specified that, after May 8, 2015, "the State Bar will only accept payment by a credit card accepted by the State Bar, in cash or by cashier's check, money order, bank certified check, or wire transfer. Personal or firm checks will be returned." Although the notice was mailed to Fuery's membership records address, Fuery did not retrieve it because he was in a skilled nursing facility recovering from an injury sustained in February 2015. The letter was returned to the State Bar as undeliverable.

[1] The facts included in this opinion are based on the trial testimony, stipulated facts, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[2] Until Fuery was suspended, his membership records address was Post Office Box 188578, Sacramento, California, 95818.

On May 4, 2015, the State Bar emailed a "courtesy reminder" to Fuery at j@fuerylaw.com, his email address on file with the State Bar. The email stated that his membership fees had to be received or postmarked by June 30 and specified the same acceptable methods of payment as contained in the March 6 notice. Fuery received this email.

On May 22, 2015, the California Supreme Court filed an order[3] suspending all attorneys who failed to pay their 2015 membership fees, including Fuery. The order stated that those attorneys would be suspended from membership in the State Bar, and "from the rights and privileges of an attorney to practice law," as of July 1 until all fees had been paid, along with applicable penalties and costs. On May 29, the State Bar mailed a copy of the suspension order and a Notice of Entry of Order of Suspension for Nonpayment of Fees to Fuery's membership records address. The notice informed him that he was included on the list of delinquent State Bar members sent to the Supreme Court, that the Supreme Court had entered an order of suspension for those delinquent members, and that the suspension order would be effective July 1. The order and notice were later returned to the State Bar as undeliverable. Because the State Bar did not receive payment from Fuery by the June 30 deadline, he was suspended on July 1.

On July 2, 2015, Fuery appeared on behalf of a client, Daniel Levine, in two matters in Butte County Superior Court. Fuery did not check his membership status before appearing in court. Brandon Williams, a public defender for the Butte County Public Defender Consortium, had previously represented Levine, but Fuery made a motion to substitute in as counsel for Levine, which was granted. In June or early July, Fuery accepted another client, William Armijo, and agreed to appear at an arraignment scheduled for Armijo on July 13.

[3] An original order was filed May 21, 2015, but an amended order was filed May 22.

On July 7, 2015, the State Bar received a personal check for Fuery's dues, postmarked July 1.[4] That same day, it emailed Fuery at j@fuerylaw.com, informing him that the personal check was not an acceptable form of payment. Fuery received this email. The email also stated that Fuery owed an additional $100 "reinstatement fee" because the payment was postmarked after the June 30 deadline. The email instructed Fuery to send a cashier's check or money order, or provide a credit card, in order "to be reinstated."

On July 8, 2015, Fuery emailed Butte County Deputy District Attorney Judith Stark-Modlin and requested discovery from her in the Levine matters. The final pretrial conference in the Levine matters occurred on July 13. Instead of Fuery, Williams specially appeared on behalf of Levine because Fuery was appearing in the Armijo matter that same day in El Dorado County Superior Court. At the Levine pretrial conference, Stark-Modlin informed the superior court that Fuery was suspended from the practice of law.

On July 16, 2015, Levine's father paid the State Bar $630 by credit card on Fuery's behalf. Fuery was reinstated that same day after the payment was processed.

III. CULPABILITY

A. COUNT ONE: UPL (Bus. & Prof. Code, § 6068, subd. (a))[5]

In count one, Fuery is charged with violating section 6068, subdivision (a), by practicing law when he was not an active member of the State Bar, in violation of sections 6125 and 6126. The NDC alleges that Fuery (1) appeared in the Levine matters on July 2, 2015, and substituted in as Levine's attorney, and (2) sent an email on July 8 requesting discovery from the deputy district attorney assigned to those matters. At that time, section 6125 provided, "No person shall

[4] Fuery had asked a former client who owed him money to pay his membership dues.

[5] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6068, subdivision (a), provides that it is the duty of an attorney to "support the Constitution and laws of the United States and of this state."

practice law in California unless the person is an active member of the State Bar."[6] Section 6126, subdivision (b), prohibits holding oneself out as entitled to practice law while on suspension. The hearing judge found Fuery culpable of the misconduct alleged in count one. We agree and find that the record supports Fuery's culpability as charged.[7]

First, Fuery engaged in UPL when he appeared in the Levine matters on July 2, 2015, because he should have known about his July 1 suspension. While the May 4 email he received did not disclose that he would be suspended on July 1, it did alert him that his membership fees had to be paid by June 30. Further, the State Bar contacted him twice by mail in March and May, specifying that he would be suspended on July 1 if he did not timely pay his fees. Fuery did not retrieve his mail from his post office box for an extended period of time, which was careless. While he did ask someone to pay his fees for him, he neither confirmed that the payment was accepted nor made any effort to determine the status of his license prior to July 2. We find that Fuery's actions overall were grossly negligent. (See *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [attorney culpable of UPL through acts of gross negligence].)

Second, Fuery knowingly engaged in UPL on July 8 when he sent an email to Stark-Modlin requesting discovery. On July 7, the State Bar sent Fuery an email, which he received, stating that the payment for his fees was not accepted because it was a personal check and that he would have to pay an additional $100 to be reinstated. At this point, Fuery knew he was suspended when he sent the email to Stark-Modlin the next day. His email requesting discovery on behalf of his client constitutes the practice of law. (See *Birbower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 127–128 [under § 6125, term "practice law"

[6] Effective January 1, 2019, section 6125 was amended to substitute "licensee" for "member."

[7] On review, Fuery's arguments center on his mental difficulties resulting from his brain surgery. We address these arguments below in our mitigation discussion.

embraces wide range of activities]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [application of legal knowledge constitutes practice of law].)

Because we find that the same acts that establish UPL also establish moral turpitude, as discussed *post*, we give no additional weight in culpability for this count as the moral turpitude charge supports greater discipline than the UPL charge. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight for finding of culpability where same facts support another charge that provides for same or greater discipline].)

B. COUNT TWO: MORAL TURPITUDE (§ 6106)[8]

In count two, the NDC alleged that the July 2 and 8, 2015 incidents also constituted acts of moral turpitude, in violation of section 6106. Specifically, the NDC alleged that Fuery committed intentional acts of misrepresentation—by holding himself out as entitled to practice law—on both dates.[9]

The hearing judge found that the same facts that she relied on for her culpability findings for the UPL charge also established culpability for two acts of moral turpitude. The judge found that Fuery violated section 6106 on July 2, 2015, through gross negligence when he appeared at the mental competency hearing for his client in Butte County Superior Court and again on July 8 when he intentionally and dishonestly held himself out as entitled to practice law by emailing a discovery request to Stark-Modlin in the same client matter. The hearing judge cited *In the Matter of Wyrick*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 91 (grossly negligent violation of § 6106 where attorney improperly held himself out as entitled to practice law but no intent to deceive)

[8] Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

[9] The NDC also notified Fuery that he could be found culpable of violating section 6106 if either of the misrepresentations on July 2 and July 8 was found to be grossly negligent.

and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 641–642 (§ 6106 violation where attorney appeared in court while knowingly suspended) to support her conclusions. We agree with her analysis of the charges and her culpability findings.[10]

C. COUNT THREE: FAILURE TO UPDATE MEMBERSHIP ADDRESS (§ 6068, subd. (j))[11]

In count three, Fuery was charged with violating section 6068, subdivision (j), by allowing his post office box address to "become invalid" and failing to notify the State Bar of his change in address, as required. The hearing judge found that Fuery was not culpable as charged in this count due to the lack of clear and convincing evidence[12] that his address was invalid. Accordingly, count three was dismissed. OCTC does not challenge the dismissal on review, and therefore we affirm the hearing judge's decision to dismiss count three with prejudice.

IV. AGGRAVATION AND MITIGATION

Standard 1.5[13] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Fuery to meet the same burden to prove mitigation.

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[10] Again, Fuery's arguments regarding count two relate to his assertion that he was "temporarily disabled" due to his brain surgery. He contends that he did not have the intent to commit the alleged acts with moral turpitude. His arguments are without merit, and we reject them, as discussed in our mitigation section below.

[11] Section 6068, subdivision (j), requires attorneys to comply with section 6002.1, which provides that attorneys must notify the State Bar of any change to their membership records within 30 days.

[12] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

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

A. AGGRAVATION

1. Indifference (Std. 1.5(k))

The hearing judge found that Fuery was indifferent towards rectification of or atonement for the consequences of his misconduct and assigned moderate weight in aggravation. The judge noted that Fuery claimed that these proceedings were a result of a political attack instigated by the Butte County district attorney in order to harm him and his medical marijuana clients.

On review, Fuery continues to insist that these proceedings are politically motivated, calling his case "nonsensical" and "based on lies." Additionally, Fuery theorized in his opening brief that the hearing judge may not have authored her decision and suggested that OCTC wrote it, although he clarified at oral argument that he believed so because OCTC's trial arguments and the judge's decision were similar.

Fuery has characterized himself as the victim, which demonstrates that he is unable to understand that his own actions have led to these proceedings. We find that his lack of insight into his misconduct reveals his indifference and warrants moderate weight in aggravation. (See *Blair v. State Bar* (1989) 49 Cal.3d 762, 781–782 [failure to recognize problems shows attorney may not correct them]; *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence but does require attorney to accept responsibility for acts and come to grips with culpability].)

2. Uncharged Misconduct (Std. 1.5(h))

Uncharged misconduct cannot serve as an independent basis for discipline, but may be used as an aggravating circumstance. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35–36 [no violation of right to notice when uncharged misconduct revealed from attorney's own testimony relevant to charged misconduct and used for aggravation].) Fuery attached several exhibits to his

pretrial statement, filed on the first day of trial, regarding the time he was suspended during the first half of July 2015. Most relevant to establishing uncharged misconduct under *Edwards* is his voluntary submission of a copy of a July 10 email he sent to the Butte County Superior Court stating that he was "double booked" on July 13 and could not appear in the Levine matters. Also, at trial, Fuery stated that he was "not certain" that he appeared for an arraignment in the Armijo matter on July 13, but, at oral argument, he clarified and confirmed his appearance in court for Armijo on that date.

The hearing judge found that the July 10 email to the superior court on behalf of Levine and his appearance on behalf of Armijo were two instances of uncharged UPL and she assigned significant weight. We agree that the record supports that Fuery committed UPL on July 10 and July 13, and, therefore, he violated sections 6106 and 6068, subdivision (a), because he held himself out as entitled to practice law when he knew he was suspended. Fuery's voluntary offering of two acts of uncharged misconduct warrant substantial aggravating weight as they demonstrate that his misconduct was not confined to the Levine matters and that he intended to continue to practice law without regard for the status of his license.

B. MITIGATION

1. No Prior Record (Std. 1.6(a))

The hearing judge gave moderate mitigation credit to Fuery for his nearly 20 years of discipline-free practice. We agree. Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) Given Fuery's lack of insight, he did not establish that his misconduct is unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [when misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].)

2. Extreme Emotional Difficulties and Physical and Mental Disabilities (Std. 1.6(d))

Standard 1.6(d) provides that mitigation may be assigned for any emotional difficulties or physical or mental disabilities where (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701.) The hearing judge assigned moderate weight in mitigation for Fuery's physical disabilities.

On review, Fuery asserts that his health problems prevented him from thinking clearly, which caused the misconduct in this matter. Fuery's medical records were admitted at trial. In October 2014, he was diagnosed with a brain tumor. In February 2015, he injured himself and was admitted to a skilled nursing facility. In March 2015, he had a diffuse cerebral edema, but refused surgery at the time. On May 11, Fuery underwent surgery to have the tumor removed. He claims that he was having cognitive problems after the surgery and did not comprehend that he should determine if his dues were paid before he held himself out as entitled to practice law. We reject that argument because the record shows that Fuery was well enough to take on two clients and appear on their behalf in court. We find that no mitigation is warranted for Fuery's claimed mental disabilities.

Overall, the hearing judge gave Fuery "moderate mitigating credit for his physical disabilities." We agree that Fuery is entitled to some mitigation for his misconduct committed by gross negligence—the July 2, 2015 court appearance. He presented evidence that he was physically unable to retrieve his mail at the time. However, his remaining July misconduct is not entitled to mitigation under standard 1.6(d) because Fuery did not establish that the aftereffects of his surgery were directly responsible for his misconduct given that he knew of his suspension from the email he received on July 7. Altogether, we find some mitigation under standard 1.6(d).

3. Cooperation with the State Bar (Std. 1.6(e))

Fuery stipulated to relevant facts that established his culpability. His cooperation preserved some court time and resources, but his stipulation did not occur until trial, and was thus not spontaneous, as the standard requires. (Std. 1.6(e) [spontaneous candor and cooperation to victims or State Bar is mitigating].) The hearing judge assigned moderate weight for Fuery's cooperation. "[M]ore extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) We agree that Fuery's stipulation to facts establishing culpability, but offered at trial, is mitigating and entitles him to only moderate mitigation.

4. Extraordinary Good Character (Std. 1.6(f))

Under standard 1.6(f), Fuery may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." Four witnesses testified at trial regarding Fuery's good character, and eight others submitted declarations. The hearing judge gave only moderate mitigation for Fuery's good character because she found that the witnesses did not represent a "wide range of references in the *legal* and general communities."

However, we find that his character witnesses do represent a wide range of references. Many of them were Fuery's current and former clients. They detailed their interactions with Fuery in his daily life and their observations of his good character. They described him as honest, kind, compassionate, and helpful. Many praised his commitment to serving under-represented communities and his pro bono work. All of the witnesses knew about the charges and attributed his misconduct to his health problems. Contrary to the judge's finding, one attorney submitted a declaration. In it, the attorney stated that Fuery is a "great advocate" and noted his dedication to his clients. We give serious consideration to this evidence because 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 sum, we find that substantial mitigating weight is deserved here. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for testimony on issue of good character where witness observed attorney's "daily conduct and mode of living"]; *In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].)

V. DISCIPLINE

Standard 1.1 states that, "The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys." Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.11 is the most severe, providing that disbarment or actual suspension is the presumed sanction for an act of moral turpitude.[14] Standard 2.11 further provides that the "degree of sanction depends on the magnitude of the misconduct."

[14] Standard 2.10(b) is also applicable and provides for suspension or reproval for UPL when an attorney is suspended for non-payment of fees. It provides that the "degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law." The hearing judge determined that a period of suspension is warranted because Fuery's misconduct involved practicing law when he knew he was suspended. The hearing judge erred when she only analyzed standard 2.10(b) and did not look to standard 2.11.

We are also guided by three comparable cases. First, in *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, Trousil received a 30-day actual suspension for engaging in limited UPL with three prior records of discipline offset by substantial mitigation. (*Id*. at pp. 241–242.) We also look to *In the Matter of Mason*, *supra*, 3 Cal. State Bar Ct. Rptr. 639. Mason appeared in court after he was suspended for 75 days for disciplinary reasons. He was culpable of violating section 6106 for practicing law while suspended. He was suspended for 90 days for UPL involving moral turpitude, comporting with increased discipline for a prior record under the standards. He received aggravation for his prior record and mitigation for his pro bono work. (*Id*. at pp. 642–643.) We also consider *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585. There, we imposed a 60-day suspension for an attorney who was culpable of moral turpitude when he held himself out as entitled to practice law in a single instance while suspended for nonpayment of membership fees. In addition, Johnston repeatedly failed to communicate with a client and failed to perform competently, but had no prior record of discipline.

Here, Fuery engaged in UPL that involved moral turpitude—the same violation as Mason and Johnston; Trousil was not found culpable of a moral turpitude violation. Both Mason and Fuery attempted to deflect responsibility for their misconduct by blaming others. Mason argued that he believed his counsel had secured a stay of his suspension and Fuery contends that he believed another person had timely paid his bar dues. Neither attempted to verify the status of their licenses. Fuery committed one more instance of UPL than Johnston, but both attorneys had no prior record of discipline and Johnston committed other types of ethical violations. We find that a more serious sanction than the 30-day actual suspension in *Trousil* is appropriate here because Fuery's actions involved moral turpitude. Since Fuery's mitigation outweighs his aggravation and he has no prior record of discipline, we find that a sanction less than the 90 days

recommended in *Mason* is warranted here. The 60-day sanction from *Johnston* is most appropriate given the circumstances.

While Fuery had nearly 20 years of discipline-free practice when he committed his misconduct, we are concerned with his lack of insight. Based on the totality of the circumstances, the 60-day suspension recommended by the hearing judge is the minimum sanction necessary to address Fuery's misconduct. Accordingly, we affirm her recommendation as appropriate discipline in this matter.[15]

VI. RECOMMENDATION

For the foregoing reasons, we recommend that John Joseph Fuery, State Bar No. 177634, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. Fuery must be suspended from the practice of law for the first 60 days of his probation.

2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Fuery 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.

3. Fuery must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Fuery 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. Fuery 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.

5. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Fuery 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

[15] Having independently reviewed all arguments set forth by Fuery, those not specifically addressed have been considered and rejected as having no merit.

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, Fuery 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.

6. During Fuery'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, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports

a. Deadlines for Reports. Fuery 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, Fuery must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Fuery 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. Fuery 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.

8. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Fuery 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 Fuery will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Fuery will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. 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 Fuery has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that John Joseph Fuery be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order 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 Fuery 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.

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is

extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.