

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

DOUGLAS WILLIAM SNYDER

A Member of the State Bar

No. 88-O-11908

Filed November 24, 1993

SUMMARY

In 1990, as a result of misconduct involving commingling, misappropriation, and failure to account for trust funds, respondent received five years stayed suspension and was actually suspended for two years, placed on probation and ordered to comply with rule 955, California Rules of Court. In this proceeding, respondent was found to have perjured himself in his affidavit submitted pursuant to rule 955(c), to have engaged in the unauthorized practice of law while suspended, to have failed to account for and return unearned fees, and to have appeared for a client without the client's authority. Based on mitigating circumstances and the fact that the Office of the Chief Trial Counsel did not recommend disbarment, the hearing judge recommended a five-year stayed suspension, five years probation, and actual suspension for 30 months, commencing retroactively as of the expiration of respondent's prior two-year actual suspension and continuing until respondent could show rehabilitation and fitness to practice. (Michael E. Wine, Judge Pro Tempore.)

The Office of the Chief Trial Counsel requested review solely on the issue that the retroactive commencement of the recommended suspension inappropriately gave respondent credit for his continuous suspension due to non-payment of his State Bar membership fees. Upon independent review of the record, the review department concluded that the recommendation of suspension rather than disbarment could not be reconciled with Supreme Court precedent generally ordering disbarment as the usual discipline for an attorney's wilful violation of rule 955. The review department held that under the circumstances, applicable case law compelled a recommendation of disbarment.

COUNSEL FOR PARTIES

For Office of Trials: Victoria R. Molloy, Paul A. Tenner

For Respondent: Theodore A. Cohen

HEADNOTES

[1 a-c] 130 Procedure—Procedure on Review
135 Procedure—Rules of Procedure

166 Independent Review of Record
1093 Substantive Issues re Discipline—Inadequacy
1911.90 Rule 955—Other Procedural Issues

Because the review department must review the record independently and is not bound by the hearing judge's findings or recommendation (Trans. Rules Proc. of State Bar, rule 453(a)), the issue of appropriate discipline in a matter involving violation of rule 955, California Rules of Court and other misconduct did not turn on the one narrow issue argued on review by the parties regarding the appropriateness of a retroactive suspension. The review department therefore considered whether any form of suspension was adequate discipline given Supreme Court precedent generally ordering disbarment for rule 955 violations. Although the State Bar's declination to recommend disbarment was accorded considerable weight, it could not be reconciled with the precedent making disbarment the appropriate discipline.

[2 a, b] 213.20 State Bar Act—Section 6068(b)

221.00 State Bar Act—Section 6106

1913.90 Rule 955—Other Substantive Issues

Where an attorney failed to advise a client, the insurer-defendant or the superior court in which the client's lawsuit was filed of his disciplinary suspension, but filed an affidavit with the Supreme Court declaring under penalty of perjury that he had complied with the rule requiring him to notify all clients, courts, and opposing parties of his suspension, his false affidavit constituted an act of moral turpitude and dishonesty, and his failure to comply with the rule violated the statute requiring respect for courts and judges.

[3 a-d] 213.10 State Bar Act—Section 6068(a)

220.30 State Bar Act—Section 6104

230.00 State Bar Act—Section 6125

Where an attorney had been suspended from practice and had been contacted by new counsel retained by his former client, the attorney's subsequent negotiation with an insurance company on the client's behalf without the new counsel's consent constituted unauthorized practice of law and violated the statute prohibiting attorneys from appearing without authority.

[4 a-c] 1913.24 Rule 955—Delay—Filing Affidavit

1913.42 Rule 955—Compliance—Notice

1913.44 Rule 955—Compliance—Affidavit

Wilful violation of rule 955 deserves strong disciplinary measures because of the rule's critical prophylactic function. Disbarment is the usual discipline ordered by the Supreme Court for such violations. Where respondent not only filed his affidavit of compliance late, itself a cause for discipline, but also completed the affidavit shortly after improperly contacting an insurer while on suspension and without client authorization, as well as falsely reporting his compliance with the rule, respondent's violation of rule 955 was a serious one.

[5] 511 Aggravation—Prior Record—Found

521 Aggravation—Multiple Acts—Found

740.59 Mitigation—Good Character—Declined to Find

750.52 Mitigation—Rehabilitation—Declined to Find

795 Mitigation—Other—Declined to Find

The fact that misconduct arose from aberrant facts and circumstances has been accorded mitigating weight in appropriate cases. However, where respondent's prior misconduct had involved multiple acts over his relatively few years of practice, and his prior and current misconduct together spanned six of his ten years in practice, it was not appropriate to consider respondent's misconduct as aberrational.

- [6 a, b] **725.36 Mitigation—Disability/Illness—Found but Discounted**
 740.33 Mitigation—Good Character—Found but Discounted
 750.32 Mitigation—Rehabilitation—Found but Discounted
 760.34 Mitigation—Personal/Financial Problems—Found but Discounted
 765.39 Mitigation—Pro Bono Work—Found but Discounted
 793 Mitigation—Other—Found but Discounted
 802.64 Standards—Appropriate Sanction—Limits on Mitigation
 1093 Substantive Issues re Discipline—Inadequacy

Mitigating evidence of family pressures and misfortunes, good character, therapy, community service, and compliance with probation duties, similar to evidence which had been found sufficiently mitigating to avert an attorney's disbarment for prior misconduct, was not sufficient to justify a recommendation short of disbarment in a subsequent matter in view of the attorney's additional, serious misconduct and the need for protection of the public.

- [7] **130 Procedure—Procedure on Review**
 135 Procedure—Rules of Procedure
 179 Discipline Conditions—Miscellaneous
 1911.90 Rule 955—Other Procedural Issues
 2509 Reinstatement—Procedural Issues

Where review department recommended respondent's disbarment, issue of whether respondent should be given credit toward required waiting period to apply for reinstatement (Trans. Rules Proc. of State Bar, rule 662), on account of time spent on continuous suspension prior to disbarment, was properly reserved for consideration by a hearing judge on an appropriate petition following the disbarment.

ADDITIONAL ANALYSIS

Culpability

Found

- 213.11 Section 6068(a)
213.21 Section 6068(b)
220.31 Section 6104
221.11 Section 6106—Deliberate Dishonesty/Fraud
230.01 Section 6125
270.31 Rule 3-110(A) [former 6-101(A)(2)/(B)]
277.61 Rule 3-700(D)(2) [former 2-111(A)(3)]
280.41 Rule 4-100(B)(3) [former 8-101(B)(3)]
1915.10 Rule 955

Aggravation

Found

- 611 Lack of Candor—Bar

Standards

- 802.30 Purposes of Sanctions

Discipline

- 1921 Disbarment

Other

- 175 Discipline—Rule 955

OPINION

STOVITZ, J.:

Effective February 1990 the Supreme Court suspended respondent, Douglas W. Snyder, from practice for five years, stayed the execution of that suspension and placed him on probation on conditions including a two-year actual suspension. The Supreme Court also required him to comply with the provisions of rule 955, California Rules of Court.¹ (*Snyder v. State Bar* (1990) 49 Cal.3d 1302 (hereafter "*Snyder I*").)

In the present case we review, a State Bar Court hearing judge pro tempore found respondent culpable of very serious additional misconduct including perjuring himself with respect to his compliance with rule 955 and unauthorized practice of law while suspended, and recommended that he be suspended for five years, that that suspension be stayed and that respondent be placed on a five-year probation with an actual suspension for thirty months commencing on February 8, 1992, the day after his prior 1990 two-year actual suspension ended.² The current recommendation also calls for respondent to demonstrate his rehabilitation, present fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (Trans. Rules Proc. of State Bar, div. V.)

Neither party disputes the findings of the hearing judge on which the present suspension recommendation rests. The Office of the Chief Trial Counsel ("OCTC") seeks our review on one ground only: that the hearing judge erred in recommending that respondent's suspension start in 1992, arguing that retroactive suspension would inappropriately give respondent credit for his continuous suspension for nonpayment of State Bar membership fees. Respondent supports the hearing judge's recommendation,

pointing out that he allowed himself to be suspended earlier in order to avoid later leaving clients in a bind because of interrupted representation, he has been suspended continuously since 1990 and he should not be penalized for his decision to act in his clients' interest.

[1a] This review under rule 450, Transitional Rules of Procedure of the State Bar, requires us to review the record independently. We are not bound by the hearing judge's findings or recommendation. (Trans. Rules Proc. of State Bar, rule 453(a); see *Bernstein v. State Bar* (1972) 6 Cal.3d 909, 916; *In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 229.) Having undertaken this independent review of the record, we shall adopt the hearing judge's findings of culpability. However neither party at oral argument nor the hearing judge in his decision explained how the suspension recommendation could be reconciled with Supreme Court precedent generally ordering disbarment as the usual discipline for an attorney's wilful violation of a Supreme Court order directing compliance with rule 955(a). Under that precedent we are unquestionably obligated to recommend disbarment on the findings of this case.

A. BACKGROUND AND RESPONDENT'S
PRIOR RECORD OF DISCIPLINE.

Effective February 7, 1990, the Supreme Court suspended respondent in *Snyder I*. According to the Supreme Court's opinion in that case, respondent's misconduct started in 1984, just four years after his admission to practice. This misconduct involved his commingling, misappropriation and failure to account for nearly \$3,500 in trust funds.

In *Snyder I*, respondent represented a friend in a personal injury case. After the case settled for \$15,000 in 1984, respondent disbursed much of the funds at his client's instructions and paid himself his attorney

1. Hereafter, references to "rule 955" will be to that provision of the California Rules of Court. As pertinent, rule 955 requires suspended, disbarred or resigned attorneys to notify clients, courts and opposing counsel in pending matters of the attorney's inability to practice law, to make prescribed arrangements for return of the clients' property and to file an

affidavit with the Supreme Court attesting to compliance with the rule.

2. Respondent, who was admitted to practice law in 1980, has been under continuous suspension for nonpayment of State Bar membership fees since July 30, 1990.

fee. However, when his client wanted the nearly \$3,500 balance, respondent told him there was no money left. Respondent admitted to his client that he had used some of the funds for respondent's own expenses. The State Bar investigation started in late 1984. Repeatedly promised repayment to the client was not completed until 1988.

The volunteer State Bar Court considered mitigating several circumstances including that respondent suffered an emotional breakdown in 1984 when his wife abandoned him, that he had to care for his 11-year-old daughter and that he also suffered financial problems and voluntarily stopped practicing law from 1984 to 1987. The volunteer hearing panel and review department recommended the five-year stayed, two-year actual suspension ordered by the Supreme Court.³

Although in *Snyder I*, the Supreme Court declined to order disbarment in view of the mitigation, it was "not so compelling" as to warrant reduction of the two-year suspension. (*Snyder v. State Bar*, *supra*, 49 Cal.3d at p. 1309.) Justices Kaufman and Broussard dissented in part, opining that the record showed "overwhelming" mitigation and that a one-year actual suspension was enough discipline. (*Id.* at p. 1312 (conc. and dis. opn. of Kaufman, J.)) The majority noted respondent's claim that the misconduct was "isolated," and had not recurred. However, it opined that respondent's misconduct after only a short period of practice and its extension over a substantial time period did not offer confidence as to lack of future harm. (*Id.* at p. 1309 (maj. opn.)) The majority also noted the length of time restitution took (well after State Bar investigation had started) and concluded that for degree of discipline purposes, this case was comparable to the case of *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, in which the Court ordered a two-year actual suspension. (*Snyder v. State Bar*, *supra*, 49 Cal.3d at pp. 1310-1311.)

B. CURRENT MATTER WE NOW REVIEW.

1. Dismissal of count 1.

Respondent was charged with three matters of misconduct. The hearing judge dismissed the first count for lack of clear and convincing evidence. This count arose out of respondent's purchase in 1978 of 280 acres of land in Riverside County. The charges alleged that respondent made false statements in 1986 and 1988 in federal court actions concerning the property and also made improper use of an attorney-client trust bank account. Notwithstanding OCTC's lack of dispute over the dismissal of count 1, we have reviewed the evidence received on that count, especially since some documentary evidence indicates on its face that respondent may have made a misrepresentation to a federal district court and it appears further that the hearing judge may not have considered all of the relevant documentary evidence in reaching his decision. However, after assessing the evidence, we do not consider it to constitute proof by the required standard of clear and convincing evidence that respondent made a culpable misrepresentation. We therefore adopt the hearing judge's findings for dismissal of count 1. Two counts remain involving the same client, Lori Smith, a dry cleaner.

2. Count 2: Smith's dissolution of marriage action.

In March 1989 Smith hired respondent to obtain a summary dissolution of marriage. Respondent asked for a \$500 fee which covered attorney fees and court filing costs. Smith paid \$250 and she and respondent agreed that the \$250 balance could be satisfied by Smith doing dry cleaning for respondent. Respondent brought Smith three large orders of dry cleaning over the next month or six-week period. Respondent interviewed Smith twice and, at a third meeting, gave her a dissolution petition for her husband to sign. Smith got her husband's signature on the petition, returned it to respondent but was unable to contact respondent further. Respondent never filed the peti-

3. The only difference between the hearing panel and review department recommendations was that the latter called for the actual suspension to continue until a standard 1.4(c)(ii)

showing was met. The Supreme Court considered the standard 1.4(c)(ii) recommendation unnecessary in *Snyder I* and declined to impose it.

tion and performed no further services for Smith. In April 1990 another attorney helping Smith wrote to respondent five times seeking an accounting or refund of money but was unsuccessful. Smith hired a new lawyer, paid another \$500 fee and finally got her dissolution which became final in November 1991.

In defending culpability on this count, respondent testified that he recalled Smith telling him to hold off taking action because she was looking at a possible reconciliation with her husband. He also testified that Smith owed him part of his fee which she was unable to pay. After assessing Smith's testimony which differed from respondent's, the hearing judge concluded that respondent was culpable as outlined above. On review, respondent does not take issue with the judge's findings.

The hearing judge concluded that respondent wilfully violated current rule 3-700(D)(2) of the Rules of Professional Conduct by not returning unearned fees upon his withdrawal from employment; that he wilfully violated former rule 8-100(B)(3) and current rule 4-100(B)(3) of the Rules of Professional Conduct by not accounting for his use of Smith's advance for attorney fees and court filing costs, and that he wilfully violated current rule 3-110(A) of the Rules of Professional Conduct by failing, on account of reckless disregard of his duties to Smith, to proceed on her behalf during an almost one-year period.

3. Count 3: Smith's personal injury case.

In March 1989, Smith hired respondent to represent her in a personal injury case. In early 1990, her case was nearing the one-year limitation on filing suit, she had not heard from respondent in some time and wondered whether respondent still represented her. In about mid-April 1990, she spoke with another attorney who agreed both to check into the matter and to represent her in it.

In the meantime, respondent's two-year suspension in *Snyder I* became effective February 8, 1990. [2a] Pursuant to rule 955, by March 10, 1990, re-

spondent was required to notify clients and others in pending matters of his suspension and by March 20, 1990, file the affidavit with the Supreme Court that he had done so. He never notified Smith of his suspension, nor did he notify the insurer-defendant or the superior court in which Smith's suit had been filed. Smith found out about respondent's suspension from her new attorney who had checked with the State Bar. On April 4, 1990, respondent filed a rule 955 affidavit with the Supreme Court falsely declaring under penalty of perjury that he had notified all clients, courts and opposing parties of his suspension.

[3a] Smith's new attorney was able to contact respondent in mid-April. In the meantime and in late March 1990, respondent called the insurer handling Smith's claim. Two weeks later (about two months after his suspension started), respondent contacted the insurer again and without the new attorney's consent, respondent received a \$7,700 offer to settle Smith's case. Respondent then called Smith with the offer. Smith reported this to her new attorney and respondent ultimately cooperated with that attorney by turning over Smith's file. The record shows that Smith's new attorney was able to settle the case for \$9,000 but respondent delayed somewhat in communicating with Smith's new lawyer to settle his claim for attorney fees.

As to this count, respondent testified that he tried to get substitutions of attorney from all his clients. His motive for doing so was to avoid having to tell his clients that he was suspended. He mailed the substitutions out but conceded he had not gotten a signed one back from Smith. His explanation was unclear as to why he dealt with the insurer after he was suspended. However, as in count 2, *ante*, on review respondent does not dispute the findings.

[3b] The hearing judge concluded that respondent's practice of law while suspended violated Business and Professions Code section 6068 (a) by violating section 6125.⁴ [2b] Respondent's failure to comply properly with rule 955 violated section 6068 (b), and the false affidavit he filed with

4. Unless noted otherwise, all references to sections are to the provisions of the Business and Professions Code.

the Supreme Court attesting to his compliance with rule 955 violated section 6106. [3c] His appearance as Smith's attorney without authority violated section 6104. The hearing judge found respondent not culpable of violating several charged provisions of the Rules of Professional Conduct.

4. Evidence in mitigation and aggravation.

Respondent presented very favorable evidence from the monitor assigned in May 1990 to oversee his probation in *Snyder I*. That monitor gave his very high opinion as to respondent's cooperation and compliance with probation conditions. Respondent testified on his own behalf to additional domestic trauma beyond what he had suffered leading up to *Snyder I*. According to respondent, at the end of 1989, his wife remarried and his daughter, whom he had raised for several years, went to live with her mother. In March 1990 respondent's father suffered a heart attack, causing respondent added anxiety. Respondent also presented favorable character, therapeutic and community service evidence. Respondent completed four months of therapy in early 1990 to recover from the anxiety, emotional strain and abuse of alcohol he experienced about the time his prior suspension started. Respondent testified that although he was entitled to resume law practice after February 1992, he abstained from doing so in order not to have to withdraw from client matters if this proceeding led to discipline.

The hearing judge considered the following evidence in aggravation: respondent's prior discipline, that his conduct involved multiple acts of wrongdoing and that in attempting to justify his acts in both Smith matters, respondent "has been and remained less than candid in accepting responsibility for his actions." (Decision, p. 18.)

The hearing judge's decision accurately noted OCTC's declination to recommend disbarment. OCTC so decided primarily due to the weight it gave to mitigating evidence and the high opinion respondent's probation monitor gave with regard to respondent's cooperation and compliance with conditions. The judge noted the seriousness of respondent's conduct but found that it was aberrational in character, occurring during a period in which he experienced emotional distress.

C. DISCUSSION.

[1b] We start by adopting the hearing judge's findings and conclusions as to culpability in both Smith matters (counts 2 and 3). Accordingly, the only remaining issue is the appropriate degree of discipline to recommend. Rather than that issue turning on the narrow question argued by the parties of whether respondent's actual suspension should start in 1992 or in the future, we believe that the appropriate issue is whether any form of suspension is adequate discipline.

[4a] The Supreme Court has stated that a wilful violation of rule 955 "is, by definition, deserving of strong disciplinary measures" because the rule performs a "critical prophylactic function." (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) The rule seeks to ensure that all concerned parties to a pending case, including the tribunal, learn about an attorney's discipline and that the Supreme Court, the ultimate body regulating attorneys, learns of the whereabouts of attorneys subject to its jurisdiction. (*Ibid.*)

[4b] In four decisions involving wilful violation of rule 955 this year, we recommended, and in three which have become final the Supreme Court ordered, disbarment—the usual discipline ordered by the Supreme Court for an attorney's wilful violation of rule 955(a). (*In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480 [original disciplinary proceeding after prior two-year actual suspension which showed wilful failure to comply with rule 955 as well as other serious misconduct; disbarment recommended]; *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439 [extensive mitigation did not outweigh record of repeated failure to adhere to duties to clients and Supreme Court orders; recommended disbarment ordered by Supreme Court Oct. 27, 1993, S020014]; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382 [recommended disbarment ordered by Supreme Court July 28, 1993, S022260]; *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322 [recommended disbarment ordered by Supreme Court Sept. 30, 1993, S014931].) While some of the individual decisions cited above involved some facts more serious than in this record, others involved either less serious facts or less serious prior discipline than here.

The only rule 955 proceeding in which we did not recommend disbarment was *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527 which involved a relatively minor violation only of rule 955(c) by a two-week delinquency in the filing of a truthful affidavit after timely notification of clients under rule 955(a). [4c] The present case illustrates both the importance of rule 955 and the seriousness of respondent's violations of it. Had respondent complied with the rule, his client, Smith, would not have had to seek counsel simply to learn whether respondent was still representing her. Respondent's filing of his rule 955 affidavit was untimely, itself a cause for discipline. (See rule 955(c); *In the Matter of Friedman, supra*, 2 Cal. State Bar Ct. Rptr. at p. 534.) But far more serious was the fact that when he completed his affidavit, he had just made a recent contact with the insurer on Smith's behalf while he was suspended and without client authorization. The conclusion is inescapable from this record that respondent falsely reported his compliance in an attempt to seek his contingent fee after months of inactivity in derogation of his client's interest and in violation of a Supreme Court order specifying his duties to report his suspension to Smith and others.

[3d] In addition to the gravity of respondent's rule 955 violation, the record also shows in count 3 that respondent violated section 6125 by practicing law while suspended. We agree with the hearing judge that negotiating with the insurer in Smith's case constituted the practice of law. (See *In the Matter of Rodriguez, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 494-495.) We also agree with the hearing judge that respondent's practice of law after suspension violated section 6104 (see *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 576-577), especially since the record shows that respondent obtained a settlement offer for Smith after Smith's new attorney had contacted respondent by leaving a phone message that he was now representing Smith. Moreover, respondent wilfully violated three of the Rules of Professional Conduct in failing to proceed on Smith's dissolution of marriage case for an extended period of time after receiving an advance for attorney fees and court filing expenses, in failing to account for those funds

and in withdrawing without refunding unearned advanced fees.

[1c] The hearing judge's recommendation of suspension rather than disbarment appears influenced primarily by two factors: OCTC's declination to recommend disbarment and the hearing judge's characterization of the misconduct in the present record as aberrational. We have accorded OCTC's declination to recommend disbarment considerable weight. Yet, in our independent review, we cannot square OCTC's declination to seek disbarment with the authorities cited *ante* which make disbarment the appropriate discipline for an attorney's serious rule 955 violation, standing alone.

[5] The fact that misconduct arose from an aberrant episode has been accorded mitigating weight by the Supreme Court in an appropriate case. (See, e.g., *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245; but cf. *Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709-710.) Looking to Supreme Court decisions for guidance, this does not seem to be the appropriate case for considering respondent's acts aberrant. In the first place, in *Snyder I*, the Supreme Court did not accord any significant mitigating weight to a State Bar Court finding that respondent's prior misconduct was isolated. On the contrary, the Supreme Court noted that respondent's misconduct involved multiple acts over his relatively few years of practice and that combination did not offer confidence as to the lack of future harm. (*Snyder v. State Bar, supra*, 49 Cal.3d at p. 1309.) Looking at the combined effect of *Snyder I* and the present record, respondent's misconduct has spanned six of the ten years of his practice from his admission to his actual suspension in *Snyder I*.

[6a] Respondent did provide evidence of anxiety caused by family pressures and misfortunes as well as evidence of good character, positive therapy to overcome personal problems, community service and positive compliance with probation duties. Some similar evidence was considered by the Supreme Court in *Snyder I*. In that case, the Supreme Court determined that that favorable evidence showed that disbarment was not warranted. In view of the additional and serious misconduct we now judge, we cannot reach the same result as was reached in *Snyder I*.

[6b] Since our primary goal in imposing discipline is the protection of the public, the courts and the legal profession (see *Snyder v. State Bar*, *supra*, 49 Cal.3d at p. 1307; *Matthew v. State Bar* (1989) 49 Cal.3d 784, 790), we conclude that the public is entitled to the protection of a formal reinstatement hearing after disbarment before respondent is entitled again to practice law.

[7] If the Supreme Court adopts our recommendation, respondent may apply for reinstatement five years after disbarment. (Trans. Rules Proc. of State Bar, rule 662(a).) Upon good cause shown, rule 662(b) allows a petition to shorten the time to seek reinstatement to be made as early as three years after disbarment. The issue addressed below and raised by OCTC on review as to credit for time spent on continuous suspension is properly reserved for consideration by a hearing judge on appropriate petition by the respondent following disbarment. (See *In the Matter of Rodriguez*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 501, fn. 10; *In the Matter of Grueneich*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 444, fn. 7.)

D. FORMAL RECOMMENDATION.

For the foregoing reasons, we recommend that respondent, Douglas W. Snyder, be disbarred from the practice of law in this state. Assuming he remains continuously suspended until the effective date of the Supreme Court's order, we do not recommend that he again be required to comply with the provisions of rule 955. We do recommend that costs be awarded the State Bar, pursuant to Business and Professions Code section 6086.10.

We concur:

PEARLMAN, P.J.
NORIAN, J.