

PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed April 14, 2004

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of) 01-PM-05232
)
RICHARD MICHAEL LADEN) **OPINION ON REVIEW**
)
A Member of the State Bar.)
_____)

In this probation revocation proceeding, respondent Richard M. Laden seeks review of the hearing judge’s decision recommending a 90-day actual suspension for his numerous untimely restitution payments to a single client and several delinquent quarterly probation reports. Respondent argues that the late restitution payments were the result of financial hardship rather than his failure to appreciate the importance of his probation conditions. He urges reduction of the discipline to 30 days’ suspension. The State Bar allows that the 90-day actual suspension from practice is the minimum appropriate discipline to ensure protection of the public and the profession, but asks that we consider increasing the actual suspension.

Having independently reviewed the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge’s recommendation of 90 days’ actual suspension, but add the condition that the suspension will remain in place until restitution is paid in full to respondent’s client, June Allen (Allen). In our view, it is necessary to add this condition because of respondent’s extensive prior record of

discipline, which is closely related to his current misconduct, together with the number of late payments and untimely probation reports. Were it not for respondent's mitigation evidence, including his belated full and complete compliance with the conditions of his probation (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150), we would find warranted a greater level of discipline.

I. Factual and Procedural Background

The key facts underlying the hearing judge's finding of culpability for probation violations are subject either to stipulation by the parties or are not here disputed. Respondent has been a sole practitioner in the area of personal injury and workers' compensation law since he was admitted to practice in California on November 29, 1978. Until recently, his sole source of legal fees has been contingency arrangements, with attendant uneven cash flow.¹ His law practice has provided respondent with only a modest income, and at times he has had difficulty making rent payments for his residence and meeting his daughter's college expenses. His wife occasionally works for him in his office, which is in their home. Because of their limited financial resources, respondent and his wife have not taken a vacation in several years.

Respondent's disciplinary history began with his mishandling of a wrongful death lawsuit on behalf of his client, Allen (Case No. 91-O-02467), arising from the death of her husband. Upon stipulation, which became effective May 1992 by Supreme Court order, respondent was privately reprimanded and agreed to submit to binding arbitration of Allen's malpractice claim, and within two years of the effective date, provide proof of compliance with the arbitration award. Ms. Allen obtained an award of \$21,349.90 in December of 1993. Thereafter, respondent sought and obtained from the State Bar a modification of the conditions

¹ Recently, respondent has undertaken defense work on an hourly fee basis to help alleviate his cash flow problems.

of his reproof to allow an additional two years, until May 1996, to complete restitution to Allen and submit proof thereof.

A second case (Case No. 91-O-09064), involving a different client, arose as the result of respondent's failure to pay a medical provider and trust account violations. In this second matter, respondent stipulated to culpability and discipline, including actual suspension for 75 days.

Respondent did not timely satisfy his restitution obligations to Allen, and, accordingly, he was disciplined for failure to comply with conditions of probation in 1998 (Case No. 97-O-11079) including 30 days' actual suspension, and again in 2000 (Case No. 99-O-10434), including two years' suspension and until he provided proof of his fitness to practice in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct,² which was stayed. Respondent also agreed, inter alia, to make restitution to Allen in the amount of \$9,910.07 in monthly payments of \$300, plus 10 percent interest per year from August 12, 1996, and to submit quarterly reports to the Probation Unit of the State Bar. In both of these matters, respondent admitted to his probation violations and stipulated to the additional discipline. The parties further stipulated to mitigating circumstances including respondent's candor and cooperation with the State Bar and his severe financial distress.

In Case No. 99-O-10434, the Supreme Court's order (No. SO89894) was filed on September 20, 2000, imposing the agreed-upon discipline. During the two-year period after the court's order, respondent was late with his monthly restitution payments on 19 of 27 occasions.³

² The Standards for Attorney Sanctions for Professional Misconduct are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

³ The State Bar's Motion To Revoke Probation charged respondent with five late payments, from May through September 2002. The hearing judge, without explanation, did not find that the May 2002 payment was late as charged. Upon our independent review of the record we find the State

The payments were between 3 and 160 days late with the majority being about 30 days late. Many were untimely because respondent would make a lump sum payment for two to three months as he was able to accrue enough cash to bring himself current. In addition, he was delinquent with his quarterly reports 7 out of 9 times.⁴ Respondent delayed the filing of many of his probation reports until he brought himself current with his restitution payments. Even though he was having difficulty complying with his payment schedule, respondent did not seek a modification of the conditions of his discipline; yet, he had previously done so in a prior disciplinary matter.

On September 23, 2002, the State Bar filed a Motion to Revoke Probation pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and Rules of Procedure of the State Bar, rules 560 et seq. Respondent filed his response on November 15, 2002. A Partial Stipulation As to Facts was filed on January 24, 2003, prior to the probation revocation hearing, which was held on January 28, 2003. In his testimony in the hearing below, respondent admitted that many of his payments and quarterly reports were late. Respondent further testified about his understanding of the importance of making timely restitution payments, but explained he simply did not have the funds to do so on a regular basis. On occasion, respondent telephoned Allen to

Bar proved by a preponderance of the evidence that the payment was not timely. In addition, the hearing judge found that the June 2002 payment was uncharged but proven to be untimely. Our review of the record indicates the untimely June payment was charged in the State Bar's Motion to Revoke and therefore we consider it as part of our culpability determination. The remaining 14 late payments were properly considered as uncharged but proven misconduct by the hearing judge. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) Our recommendation of discipline, *post*, is not materially affected by these discrepancies.

⁴ The hearing judge found only one late quarterly report, which was due July 2002, for purposes of determining culpability because it was identified in the Motion to Revoke Probation. The judge found seven late filings in aggravation as proven but uncharged misconduct. Our independent review of the record confirms that there were only six other late reports in addition to the one charged in the State Bar's Motion to Revoke.

explain why his payments were late, and Allen, by way of a declaration admitted into evidence, confirmed these conversations.⁵ Respondent's wife presented testimony corroborating their ongoing financial difficulties. At the time of the hearing below, respondent was current with his restitution payments and quarterly reports and had timely passed the professional responsibility examination.

The State Bar presented no evidence to controvert respondent's showing of financial hardship. The Bar submitted a declaration in lieu of testimony of Shuntinee Brinson, a probation deputy, authenticating numerous exhibits, which confirmed that the State Bar had properly notified respondent of his probation duties and that it made numerous contacts with respondent to obtain his compliance with his payment obligations.

The hearing judge found that the State Bar proved by a preponderance of the evidence⁶ that respondent wilfully violated the conditions of his probation in that he failed to make timely restitution payments on three occasions and failed to timely file one quarterly report.⁷ The judge also found the following factors in aggravation: respondent's prior record of discipline (std. 1.2(b)(i)); multiple acts of misconduct (std. 1.2(b)(ii); and uncharged misconduct arising from the additional late restitution payments and quarterly reports not identified in the Motion to Revoke Probation (std. 1.2(b)(iii)). The judge found the following factors in mitigation: respondent's financial hardship; his remorse and recognition of his wrongdoing; his candor and

⁵ Allen stated that respondent was always courteous when he called to explain his financial difficulties, and she requested leniency for respondent because she believed a prolonged suspension would interfere with her ability to receive her payments. She confirmed that as of January 29, 2003, respondent still owed her \$7,600.

⁶ The "preponderance" standard is what is required for probation revocation. (See Bus. & Prof. Code, § 6093, subd. (c); Rules Proc. of State Bar, rule 561.)

⁷ See, footnotes 2 and 3 ante, pages 3 and 4.

cooperation with Allen; and the absence of any bad faith, coupled with his good faith efforts to make restitution.

The hearing judge deemed the discipline requested by the State Bar to be unduly harsh,⁸ after considering the mitigating factors. He recommended that respondent's probation imposed by Supreme Court order (No. SO89894) dated September 20, 2000, be revoked, that the stay of execution of suspension be lifted, and that in its place, respondent be suspended for two years and until he provided proof of his rehabilitation and fitness to practice in accordance with standard 1.4(c)(ii) and until he completed restitution to Allen in accordance with the order of the Supreme Court in Case No. 99-O-10434 and continued to submit quarterly reports to the State Bar. The court further recommended, inter alia, that the two-year suspension be stayed and respondent be placed on four years' probation on conditions including 90 days' actual suspension. Respondent requested review, seeking a reduction of the recommended 90 days to 30 days' actual suspension.

II. Discussion

A. Culpability

On appeal, respondent does not dispute that there were many late payments and delinquent probation reports, nor does he deny that he was aware of his obligations to timely pay restitution and submit the quarterly reports. He asserts that in good faith he intended to timely make payments and file his reports, but he simply could not do so because of his financial difficulties resulting from his contingency fee cases. In the past few years he has made an effort to achieve greater financial stability by attracting more clients on an hourly fee basis.

⁸ The State Bar requested in its Motion to Revoke Probation that respondent be actually suspended from the practice of law for two years, which equaled the entire suspension stayed by the September 20, 2000 Supreme Court order, and that he be placed on involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (d).

We cannot emphasize enough the importance of timely restitution payments as central to the rehabilitative process. As we said in *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312: “Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney’s misconduct. [Citations.] Thus, a probationer’s attitude toward the restitution is a significant factor to be weighed.” We consider in mitigation, *post*, respondent’s successful, albeit untimely, efforts to keep current with his restitution and reporting obligations as evidence of good faith. However, the law does not require a bad purpose or evil intent to support a wilful violation of probation conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Indeed, “[w]ilfulness for purposes of probation revocation (and other disciplinary) proceedings is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate . . . the probation condition and does not necessarily involve bad faith.” (*In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. at p. 309.) Respondent admits his untimely payments and probation reports and the evidence in the record supports these were purposeful acts. Accordingly, we affirm the hearing judge’s culpability finding that respondent wilfully breached the terms of his probation.

B. Aggravation

In analyzing aggravating circumstances, we take into account the Standards for Attorney Sanctions for Professional Misconduct, recognizing that they are to be considered as guidelines and construed in light of the decisional law. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 30.)

1. Prior Record of Discipline

The hearing judge gave little weight to respondent's prior discipline because he found that "the nature of the violations in this matter do not raise a serious concern about public protection or demonstrate that Respondent has failed to undertake steps towards rehabilitation." We disagree. This is the third matter that has been brought by the State Bar as the result of respondent's failure to make timely restitution to Allen.⁹ At this point, respondent should have a heightened awareness of his need for strict compliance with his reporting and payment obligations. The fact that his present probation violations are closely related to his past disciplinary infractions raises concerns about respondent's rehabilitation. (*In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138, 151.) Ordinarily, when there is a close nexus between previous misconduct and the present probation violation, a substantially greater degree of discipline is needed than would otherwise be necessary. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 528.) Moreover, respondent's failure to seek a modification of his restitution obligations when his financial difficulties continued to plague him is inexplicable, since he previously sought a modification of the payment terms in an earlier proceeding. We assign significant weight in aggravation because of respondent's prior disciplinary record. (Std. 1.2(b)(i).)

2. Multiple Acts of Misconduct, Including Uncharged Misconduct

We agree with the hearing judge's finding in aggravation that respondent committed multiple acts of charged and uncharged misconduct. (Std. 1.2(b)(ii).) We simply cannot ignore the proven charges that he was late in his payments on five occasions and with one of his probation reports. In addition, we consider in aggravation the 14 late payments and 6 untimely

⁹ This is the fifth disciplinary matter involving respondent, taking into account the original proceedings involving Allen and the other client matter involving trust account violations.

quarterly reports, which were proven by a preponderance of the evidence below as uncharged probation violations. (*Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.) As a consequence of these multiple violations, the State Bar was required on at least seven occasions to contact respondent. The repeated need of the State Bar to intervene in order “to seek respondent’s compliance with duties he voluntarily undertook was inconsistent with the self-governing nature of probation as a rehabilitative part of the attorney disciplinary system.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

3. Additional Aggravating Circumstances

We agree with the hearing judge, who rejected the State Bar’s claim as aggravation the uncharged misconduct of a trust account violation arising from a trust account check issued to Allen for \$600 for a restitution payment. The State Bar offered no evidence to rebut respondent’s testimony that the funds that were withdrawn to pay Allen were his fees and not funds owed to clients.

We also do not give any weight in aggravation to the State Bar’s claim of acts of moral turpitude when respondent signed under penalty of perjury nine quarterly reports attesting to the timely payment of restitution when he knew the payments had been paid late. At the time he signed the reports, respondent was current with his payments and he therefore believed he could attest to his compliance with his probation conditions. The State Bar also asserts as aggravation that pursuant to standard 1.2(b)(iv) respondent significantly harmed his client each time he failed to make timely restitution payments and caused harm to the administration of justice each time he violated his probation and required additional efforts by the State Bar to obtain his compliance. While we agree that respondent’s failures to timely make restitution were numerous, we do not believe that these failures should be considered as separate and independent bases of aggravation since, to a great extent, the harm was inherent in the probation

violations and therefore is duplicative. (*In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76.) The appropriate level of discipline should not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal State Bar Ct. Rptr. 576, 594; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

Finally, the State Bar asserts as an aggravating circumstance that respondent lacked candor in accordance with standard 1.2(b)(vi), when he testified that he believed he had to be in full compliance before he could file a probation report. Although the hearing judge stated that “the Court is not convinced as to the accuracy of Respondent’s statements in this regard,” he did not make a finding that respondent lacked candor. We are not inclined to substitute our own credibility determination on this record. (See Rules Proc. of State Bar, rule 305(a).)

C. Mitigation

1. Financial Hardship and Good Faith Efforts

We agree that the hearing judge properly considered in mitigation respondent’s prolonged financial problems, which interfered with his ability to make timely payments. We further adopt the judge’s finding that respondent made a good faith effort to meet his restitution obligations when he was able. (Std. 1.2(e)(ii); *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 304; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 13.) As evidence of his good faith effort to comply with his restitution obligations, we consider that respondent in fact brought himself current with all of his probation conditions. (*In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138,150.) We find his successful struggle to ultimately meet his obligations in spite of substantial financial hardship reflects a positive attitude toward his probation and demonstrates his understanding of the rehabilitative and public policy goals of disciplinary probation. (*In the Matter of Taggart, supra*, 4 Cal. State

Bar Ct. Rptr. 302, 312.) We therefore assign weight in mitigation to respondent's belated, but complete compliance with his probation conditions. Nevertheless, we discount this additional evidence in mitigation to some extent because on several occasions respondent brought himself current only after being notified by the probation unit of his delinquencies. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 659; *In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. 523, 530)

2. Candor and Cooperation with Victim

The hearing judge also found as mitigating circumstances that respondent kept in contact with Allen and displayed cooperation and candor with her about his repayment difficulties. (Std. 1.2(e)(v).) Ms. Allen stated that she was aware of the financial constraints respondent faced because he had called her "a few times over that past several years" about his inability to make a payment and that he always was courteous when he called. But the record also shows that there were times when Allen called the State Bar to enlist assistance with timely payments. We accordingly give only slight mitigation for respondent's sporadic cooperation and candor with the victim.

3. Recognition of the Seriousness of Wrongdoing

The hearing judge found in mitigation that respondent recognized his wrongdoing and was remorseful. (Std. 1.2(e)(vii).) We question the depth of respondent's understanding of the seriousness of his misconduct. When asked if it was important to him if he kept current with his restitution payments, he testified: "[O]ften I am confronted with a difficult decision about where to allocate the available resources. And sometimes I've had to make a very difficult choice. And June Allen has unfortunately had to wait a couple of – *a few times*." [Emphasis added.] There is an element of denial in this testimony. In contrast to his characterization of a "*few*" late payments, the evidence in this probation revocation proceeding disclosed respondent was late at

least 19 times. Counterbalancing our concern is evidence that in spite of numerous lapses in respondent's timely compliance, in no instance did respondent ignore or disavow his obligations, and indeed in each and every instance of the 27 payments due to Allen and the various late probation reports, respondent ultimately brought himself current once he was able to do so. Additional evidence of respondent's recognition of his problems was his affirmative efforts to remedy his "roller coaster" financial situation by actively seeking clients who will retain him on an hourly basis. On balance, there is sufficient evidence to find slight mitigation because of his appreciation of the nature of his misconduct.

4. Community Service

The hearing judge also gave respondent mitigative credit for his contributions to the community in the form of volunteer work at a veteran's center and his assistance to an elderly widow. He also noted respondent's regular attendance at his synagogue. We also give some weight to his community contributions in mitigation. (Std. 1.2(e)(vi).)

D. Level of Discipline

As sympathetic as we can be with respondent's claim that if he is actually suspended from practice for an extended period, he will be unable to make timely restitution payments, we cannot excuse a degree of discipline that is otherwise warranted. If avoidance of actual suspension were a prerequisite for respondent's continued payment, it would have been more appropriate for respondent to have resolved his restitution obligation at a time when the State Bar gave him ample opportunity to do so, thereby obviating this very proceeding.

According to the State Bar, comparable probation cases warrant more than a 90-day actual suspension. In the absence of the mitigation evidence, we would agree. "[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of that

amount as an actual suspension.” (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. 567, 573.) In determining the appropriate level of discipline, we look to the decisional law for guidance. (*In re Morse, supra*, 11 Cal.4th 184, 207.) At one end of the disciplinary spectrum is our recent decision in *In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. 567. In that case, Gorman was two months late in making his restitution payment of the principal which amounted to a total of \$620, and he was nine months late in making the 10 percent interest payment. He also did not timely attend the State Bar’s Ethics School. We recommended that 30 days’ actual suspension be added as a condition to the hearing judge’s recommendation of a two-year probation period, because we found additional aggravation in the fact that repeated reminders and pressure from the State Bar were necessary to ensure completion of restitution and also that the attorney improperly listed the Yolo County District Attorney’s Office in the pleadings’ caption (where Gorman was a deputy district attorney) when that office was not a party to the proceedings. (*Id.* at pp. 573-574.)

In the Matter of Howard (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, another probation revocation matter, also is instructive. In that case the hearing judge imposed 90 days’ actual suspension because the respondent failed to submit quarterly probation reports and to timely deliver certain financial records pertaining to a former client to her accountant. Howard failed to answer the notice to show cause and his default was entered. We found culpability based on the failure to deliver the client’s financial records and the failure to file two quarterly reports, and we concluded that one year actual suspension was appropriate and imposed a standard 1.4(c)(ii) requirement before his resumption of practice. (*Id.* at pp. 451-453.) An important concern to us in *Howard* –not present in the instant case– was the attorney’s utter lack of cooperation with the State Bar, as evidenced by his default and his failure to turn over

financial records, which prevented the accountant from assessing whether disciplinary restitution was appropriate. (*Id.* at pp. 451-452.)

In the Matter of Tiernan, supra, 3 Cal. State Bar Ct. Rptr. 523, is illustrative of the cases that have imposed one year actual suspension. In *Tiernan*, the attorney was on disciplinary probation and the State Bar sought revocation on the grounds that he wilfully failed to cooperate with his probation monitor and failed to submit two quarterly reports. The hearing judge recommended, inter alia, the attorney be actually suspended for six months. We found as aggravation Tiernan's record of four prior discipline matters, including an earlier probation revocation matter because of his failure to file his probation reports. (*Id.* at p. 528.) We also found as aggravation six multiple acts of misconduct: four untimely probation reports (including two late probation reports that were not charged but were proven at the hearing); one act of failing to cooperate with his probation monitor; and the filing of a quarterly report that was defective. (*Id.* at pp. 529-530.) We concluded that six months actual suspension was inadequate and instead recommended one year actual suspension (including the time spent on involuntary inactive enrollment) because of the aggravating circumstances and lack of mitigation. (*Id.* at pp. 527, 531.) The violations in *Tiernan* are similar to the ones we have in the instant case and similar aggravation was present (i.e., multiple violations of the same probations conditions, and prior misconduct that was the same or similar to the present misconduct). A major distinction, however, is there was no mitigation evidence in *Tiernan* (*Id.* at p. 527), where as there is some mitigation in this matter.

The case of *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, is distinguishable from this case because Hunter failed to make about \$1,166.50 of required restitution in the total amount of \$1,766. He also failed to timely submit a quarterly report. Further defects in his probation reports were considered aggravating as was his uncooperative

conduct in the hearing below. We considered the aggravating circumstances to outweigh the few mitigating ones, which consisted of emotional difficulties experienced by Hunter and favorable character evidence. We recommended, and the Supreme Court imposed, actual suspension of one year and until Hunter provided proof of restitution.

In the Matter of Broderick, supra, 3 Cal. State Bar Ct. Rptr. 138 is also more serious than the present case. Broderick failed to make any of the required restitution of \$4,466.50 plus interest and filed no quarterly reports. We also found Broderick culpable of misconduct in an original disciplinary proceeding as well. We gave several mitigating circumstances considerable weight but also considered three aggravating ones, including the failure to obtain required psychological counseling. For the probation violations, the Supreme Court imposed a one-year actual suspension.

Finally, *In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. 302 is a more serious probation revocation case. Attorney Taggart had two previous suspensions and was required to pay \$1,528 plus interest arising from discovery sanctions the attorney was ordered to pay. The attorney failed to make any of the restitution payments over a three-year period. Indeed, four days before the Supreme Court's disciplinary order became effective, Taggart filed a chapter 7 bankruptcy petition and sought to have the restitution obligation discharged. We were unwilling to consider his financial difficulties as mitigation because the evidence did not satisfy the evidentiary standard. (*Id.* at p. 311.) In aggravation, we considered his prior record of discipline. (*Ibid.*) We recommended six months' actual suspension.

III. Recommendation.

Protection of the public and rehabilitation of the attorney are the primary aims of disciplinary probation. (*In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138, 151.) It is for this reason that discipline imposed for the wilful violation of probation often calls for

substantial discipline as a reflection of the seriousness with which compliance with probationary duties is held. An attorney who wilfully violates a significant condition of probation, such as restitution, can anticipate actual suspension as the expected result, absent compelling mitigating circumstances. Here, respondent should have recognized the serious consequences of his failures to timely pay restitution and file quarterly reports because of his previous encounters with the State Bar disciplinary system. We are thus constrained to assign serious sanctions to respondent's numerous probation violations. (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. 523, 530-531.) Furthermore, when, as here, an attorney commits multiple violations of the same probation condition, the gravity of each successive violation increases, resulting in more severe discipline. (*Id.* at p. 531.)

Balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline (e.g., *Gary v. State Bar* (1988) 44 Cal.3d 820, 828), we find that the 90-day actual suspension recommended by the hearing judge is sufficient to achieve the goals of attorney disciplinary probation, but that the recommendation of the hearing judge should be modified to include an additional condition that requires respondent's continued actual suspension until restitution is fully paid to Allen. This is intended as an incentive to respondent to be pro-active in his efforts to satisfy his restitution obligations to Allen and bring to a conclusion this 10-year saga with the State Bar. We also believe the added condition of 90 days' actual suspension and until full restitution is paid is necessary in recognition of the past efforts by the State Bar that were needed to ensure respondent's timely and full compliance. In reaching this conclusion, we take into account respondent's belated but complete satisfaction of his restitution and reporting conditions in the face of ongoing financial difficulties, the fact that all of the violations relate to one client matter, and that the client has represented respondent has shown concern about his inability to pay and exhibited courteousness towards her. The need to

protect the public by imposing a significantly longer period of stayed suspension is therefore diminished.

We, accordingly, recommend that the stay of suspension previously ordered in Supreme Court case number SO89894 should be set aside, and in its place a new order should be issued by the Court directing that respondent be suspended for 90 days and until restitution is fully paid as set forth in the Court's order, and further until he furnishes satisfactory proof to the State Bar's Office of Probation of full satisfaction of his restitution obligations. Should respondent's actual suspension exceed two years, he shall provide proof of his rehabilitation and fitness to practice in accordance with standard 1.4(c)(ii). Additionally, we recommend that respondent be ordered to comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

In view of respondent's passage of the professional responsibility examination and his ultimate completion of the State Bar's Ethics School, we do not recommend that he be required to again complete those requirements. We do recommend that the State Bar be awarded costs in accordance with the provisions of Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

EPSTEIN, J.

We concur:

STOVITZ, P. J.
REMKE, J.*

*Hon. Joann Remke, Hearing Department Judge, sitting by designation, pursuant to the provisions of rule 305(e), Rules of Procedure of the State Bar.

Case No. 01-PM-05232

In the Matter of Richard Michael Laden

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