

Filed July 30, 2001

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of

**TIMOTHY LEE TAGGART,**

A Member of the State Bar.

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**99-PM-10316**

**OPINION ON REVIEW**

In this probation revocation case, respondent Timothy Lee Taggart seeks review of the hearing judge’s decision that found that he failed to make restitution timely as required by one of the conditions of his two-year disciplinary probation. The hearing judge recommended that respondent's probation be revoked, that the stay of the suspension previously ordered be lifted, that respondent be actually suspended for 30 days, and that a new one-year period of probation be imposed, subject to new probation conditions, including that respondent pay the restitution.

Respondent contends on review that revoking his probation was a “violation of due process and equal protection, and was discriminatory based upon financial status.” Respondent apparently seeks dismissal of this proceeding or an extension of the previously imposed probation. The State Bar contends that the hearing judge’s findings of fact and conclusions of law regarding culpability are supported by the record, but that the discipline should be increased to a “very lengthy suspension.”

We have independently reviewed the record and conclude that the hearing judge's findings of fact and conclusions of law regarding culpability are supported by the record, including the conclusion that respondent’s conduct was wilful, and we adopt them with minor modifications. We also conclude that the record as a whole, and in particular respondent’s indifference to his duty to comply with the restitution condition of his disciplinary probation,

warrants increasing the recommended discipline to two years' stayed suspension and two years' probation on conditions, including six months' actual suspension.

### **FACTS AND FINDINGS**<sup>1</sup>

Respondent was admitted to the practice of law in California in June 1976. He has been disciplined twice prior to the present probation revocation proceeding. We shall refer to these prior proceedings as Taggart I and Taggart II. The present probation revocation case arises from respondent's failure to comply with one of the conditions of probation imposed in Taggart I.

Taggart I resulted from a Supreme Court order filed on August 20, 1997, and effective September 19, 1997, in case number S061148 (State Bar Court case number 91-O-03429), suspending respondent from the practice of law for a period of two years, staying execution of the suspension, and placing him on probation for two years subject to conditions, including seven months' actual suspension. This discipline was based on a stipulation to facts and disposition between respondent and the State Bar which was approved by the State Bar Court.

The misconduct for which respondent was disciplined in Taggart I involved failing to return unearned fees promptly in violation of rule 3-700(D)(2) of the Rules of Professional Conduct;<sup>2</sup> failing in two separate instances to obey court orders in violation of section 6103 of the Business and Professions Code;<sup>3</sup> failing to perform services competently in violation of rule 3-110(A); providing information to a third party which was adverse to a former client in order to

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<sup>1</sup> We have added some factual detail to the hearing judge's findings based on our independent review of the record. Also, the hearing judge stated in his decision that this matter was heard in the hearing department by way of "written declarations and exhibits of the parties." There are declarations and exhibits that are a part of, or attached to, numerous pleadings that have been filed and are a part of the record on review. It is not clear whether the hearing judge considered all or only some of declarations and exhibits submitted. We have considered all declarations and exhibits filed in this case.

<sup>2</sup> All further references to rules are to these rules unless otherwise noted.

<sup>3</sup> All further references to sections are to this code unless otherwise noted.

enhance respondent's position in a malpractice case filed against him by the former client in violation of section 6106; disclosing confidential information about the same former client to a third party in violation of section 6068, subdivision (e); and filing a motion to disqualify a superior court commissioner in a civil case without probable cause or legal basis and for the purpose of harassing the commissioner in violation of rule 3-200(A). In aggravation, respondent had a record of prior discipline in that he was disciplined in Taggart II (see below) and the misconduct involved multiple acts of wrongdoing. No mitigating circumstances were found.

One of the conditions of the probation in Taggart I required respondent to make restitution in the amount of \$1,528 plus interest to the attorney (Linfield) who represented respondent's former client in the malpractice action that the former client filed against respondent. The restitution resulted from discovery sanctions respondent was ordered to pay the attorney and did not. The restitution was to be paid by September 19, 1998. To date, respondent has not paid the restitution or any part thereof.

In September 1997, four days before the effective date of the Supreme Court's discipline order in Taggart I, respondent filed a chapter 7 bankruptcy petition and listed the restitution as a debt. Linfield filed a complaint to determine the dischargeability of the restitution debt. Pursuant to stipulation between respondent and Linfield, the complaint was dismissed in December 1997, and the bankruptcy court subsequently discharged all of respondent's debts, including the restitution.

In June 1999, the State Bar filed the present motion to revoke respondent's probation based on his failure to pay the restitution as ordered in Taggart I. Thereafter, respondent filed a contempt proceeding in the bankruptcy court against the State Bar attorneys who filed the motion to revoke his probation. Respondent sought to have the State Bar attorneys held in civil contempt for violating the discharge injunction imposed by 11 United States Code section 524, and specifically for violating of 11 United States Code section 525(a) by attempting to revoke

respondent's probation based on his failure to pay a discharged debt. In September 1999, the bankruptcy court concluded that the filing of the motion to revoke probation was not a violation of the discharge injunction, or of section 525(a), and that therefore the State Bar attorneys were not in contempt of court. The bankruptcy court found that compelling obedience of the court order to pay the sanctions by requiring restitution was "part of the rehabilitative process and hence a proper, nondischargeable condition of probation." There is no evidence in the record before us showing that respondent sought review of the bankruptcy court's decision.

In January 2000, respondent filed a motion to modify the probation imposed in Taggart I by deleting the restitution requirement. The hearing judge denied the motion because respondent had been "dilatory in bringing it." Respondent did not seek timely review of that order as provided by rule 553(b), Rules of Procedure of the State Bar.

Based on the above, the hearing judge concluded that respondent wilfully failed to comply with the restitution condition of his probation.

In aggravation, the hearing judge found that Taggart I and Taggart II were prior discipline. Taggart II resulted from a Supreme Court order filed August 20, 1997, and effective September 19, 1997, in case number S061220 (State Bar Court case number 91-O-02615), suspending respondent from the practice of law for a period of two years, staying execution of the suspension, and placing him on probation for two years subject to conditions of probation, including 120 days' actual suspension. This discipline followed a trial and decision in the State Bar Court.<sup>4</sup>

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<sup>4</sup> The stipulation to facts and disposition in Taggart I was filed in the State Bar Court in February 1997, and the hearing judge's decision in Taggart II was filed in the State Bar Court in November 1996. Respondent unsuccessfully sought Supreme Court review in each case. The Supreme Court's orders in each case were filed on the same day. The Court ordered the discipline in Taggart I to be concurrent with the discipline in Taggart II.

The misconduct underlying Taggart II involved respondent's failure to disclose to his client that he had a business, financial, professional, and personal relationship with another person who had interests adverse to respondent's client in violation of rule 3-310(B)(3); his failure to disclose to the same client that he had a professional and personal interest in a judgment he obtained for the client in violation of rule 3-310(B)(4); his continued representation of the client while representing the conflicting interests of the third party in violation of rule 3-310(C)(2); his acceptance of employment adverse to a client without obtaining the informed written consent of the client in violation of rule 3-310(E); and his act of moral turpitude by delaying the deposit of a check issued for the benefit of the client so that a third party, with whom respondent had a professional and personal relationship, could levy upon the check in violation of section 6106. In mitigation, respondent did not have a record of prior discipline. In aggravation, the misconduct involved multiple acts of wrongdoing; was surrounded by bad faith, dishonesty, and concealment; and significantly harmed his client.

In mitigation in the present probation revocation case, the hearing judge found that respondent faced financial difficulties "over the past couple of years" that were beyond his control. However, the judge noted that this factor would have been given more weight had respondent presented a more complete picture of his financial affairs, in that respondent provided evidence of his income but not his expenses for the relevant years.

### **DISCUSSION**

Although respondent's briefs on review are not a model of clarity, it appears that he is challenging the hearing judge's denial of his motion to modify his probation as well as the hearing judge's conclusion that he wilfully violated the restitution condition of his probation.

#### **1. Motion to Modify Probation**

Motions to modify probation are governed by rules 550 through 554 of the Rules of Procedure of the State Bar. Rule 553(b) specifically provides that a ruling by a hearing judge on

a motion to modify probation “shall be reviewable only pursuant to rule 300.” Rule 300(k) of the Rules of Procedure of the State Bar provides, as applicable here, that the standard of review under rule 300 is abuse of discretion or error of law. Before turning to the merits, we note that respondent did not seek timely review of the hearing judge’s order. (See Rules Proc. of State Bar, rule 300(b).) Nevertheless, we granted his motion for late filing and therefore consider the request, but we do so, as indicated, under the standard of review applicable to rule 300 petitions.

The grounds respondent asserted in support of his motion in the hearing department were that the discovery sanctions order which was the basis for the restitution “never became final,” that the hearing judge advised him to bring a motion to strike the restitution from his probation, and that the discovery sanctions were discharged in his bankruptcy proceeding and therefore were “null and void.” The State Bar opposed the motion partially on the ground that the period of probation had expired prior to the filing of the motion to modify the probation and that, therefore, there was no probation to modify. The hearing judge focused primarily on this part of the State Bar’s argument. Applying the “rule of lenity,” the hearing judge concluded that the motion to modify could be brought after the period of probation had expired. The hearing judge ultimately denied the motion, however, because he concluded that respondent was dilatory in filing it as respondent knew of his troubled financial picture almost 28 months before making the motion and delayed filing it until after the State Bar filed the present proceeding.

We limit our discussion to whether the hearing judge abused his discretion or made an error of law in denying the motion on the ground that respondent was dilatory, as this is the only issue raised by respondent on review.<sup>5</sup> Respondent argues that the motion to modify was timely because it was filed soon after the bankruptcy court ruled on his contempt order to show cause.

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<sup>5</sup> Although we do not reach the merits of the other issues raised by respondent in the hearing department, we note that this proceeding involves respondent’s failure to comply with the Supreme Court’s order imposing discipline and not the court order imposing the sanctions. The Supreme Court’s order is final, has not been modified, and is not “null and void.”

Respondent stipulated to paying the restitution as a condition of his probation, and that stipulation was filed in February 1997. The Supreme Court order imposing the restitution was filed in August 1997. Respondent's financial condition apparently existed at the time he entered into the stipulation and continued, according to him, until at least the time he filed the motion to modify his probation. We also note that at the time of these events it was well established that restitution could be imposed as a condition of disciplinary probation even if the underlying subject of the restitution had been discharged in bankruptcy. (*Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009.) Thus, respondent was aware or should have been aware of both the factual and legal need to modify the probation long before the motion was filed.

Respondent also seems to contend that the State Bar should be estopped from raising the timeliness of his motion to modify the probation.<sup>6</sup> According to respondent, he noted in every probation report he submitted to the State Bar that "the restitution issues had been resolved through the Bankruptcy." Respondent argues that the State Bar did not dispute any of those statements until it filed the present proceeding and that it would be "unfair and unjust" to "allow the Bar to wait until the last hour of probation and then complain that Respondent's motion to modify was untimely."

We first note that it is not at all clear that estoppel is applicable in this proceeding. "Estoppel will not ordinarily lie against a governmental agency if the result will be the frustration of a strong public policy. [Citations.]" (*Bib'le v. Committee of Bar Examiners* (1980) 26 Cal.3d 548, 553.) The goals of attorney discipline - protection of the public, courts and legal profession - are strong public policy considerations that militate against applying the doctrine.

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<sup>6</sup> As respondent offered no legal authority and little analysis in support of this contention, the legal framework of the argument is not clear. It is also not clear whether respondent is asserting that the doctrine of estoppel precludes the State Bar from arguing the untimeliness of his motion to modify probation and, or, precludes the State Bar from seeking the revocation of his probation. Our discussion applies to both arguments.

Even if estoppel were applicable, respondent has failed to demonstrate a factual basis for the claim. To successfully invoke the doctrine against the State Bar respondent would have to show that the State Bar's actions were intended to be acted upon by respondent to his injury and that he was ignorant of the true state of facts. ((*Bib'le v. Committee of Bar Examiners*, *supra*, 26 Cal.3d at pp. 552-553.) No such showing has been made here; nor could it be, as there was clear Supreme Court authority (*Brookman v. State Bar*, *supra*, 46 Cal.3d at p. 1009) controlling the actions and knowledge of both parties.

For the above reasons, we conclude that the hearing judge did not abuse his discretion or commit an error of law in denying the motion. Our review of the remaining issues in this case is pursuant to rule 301 of the Rules of Procedure of the State Bar. That review is *de novo*; we must independently review the record and may adopt findings and conclusions that vary from those of the hearing judge. (Rules Proc. of State Bar, Rule 305; Cal. Rules of Court, rule 951.5.) The standard of proof in probation revocation proceedings is the preponderance of the evidence. (§ 6093, subd. (c); Rules Proc. of State Bar, rule 561.)

## 2. Culpability

Respondent argued below and appears to argue on review that his conduct was not wilful because he believed that he had no obligation to pay the money as the restitution was discharged in his bankruptcy, and because he did not have the money to pay the restitution. Wilfulness 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 law or the probation condition and does not necessarily involve bad faith. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536; *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) Moreover, wilfulness does not require actual knowledge of the provision violated. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) Thus, the term wilful does not require a showing that respondent intended the consequences of his acts or omissions, it simply

requires proof that he intended the act or omission itself. The “omission” at issue here is the failure to pay the restitution to attorney Linfield as ordered. Accordingly, we must determine whether it has been shown by a preponderance of the evidence that respondent had a willingness or general purpose to omit paying the money.

Respondent admits that he did not pay the restitution, and there is no evidence in the record suggesting that this omission was other than a purposeful act. Thus, the failure to pay the restitution was unquestionably wilful under the above definitions. Whether respondent believed that the bankruptcy discharge voided the Supreme Court order requiring him to pay restitution is simply not relevant to the issue of the wilfulness of his failure to pay, as it need not be shown that respondent intended the consequences of his omission or was even aware of the disciplinary provision he was violating.

Considerations of due process and fundamental fairness require, under the circumstances presented here, that we also examine both respondent’s ability to pay the restitution and his efforts at acquiring the resources to pay. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 537; *Bearden v. Georgia* (1983) 461 U.S. 660, 672.) Respondent asserted below that during the time he was on probation he did not have the ability to pay the restitution. Although the hearing judge did not make any specific factual findings regarding respondent’s financial situation, he concluded that respondent’s “financial difficulties over the past couple of years” were a mitigating factor. The hearing judge discounted the weight he accorded this factor because respondent did not present a more complete picture of his financial affairs in that respondent listed his income but not his assets and expenses for the period of time.

Respondent testified that he earned \$560 from teaching and \$1,300 from legal research work in 1998. Respondent also submitted pay stubs from two separate school districts showing gross earnings of \$6,184 for the period of January 1 through October 1999. In his opening brief on review, respondent stated that he earned \$1,860 in 1998 and \$5,620 from teaching in 1999.

No evidence was submitted of respondent's assets and expenses, or of his income for the years prior to 1998 or since 1999. Respondent also indicated that he has custody of his son and, since December 1999, his daughter, and that he pays child support for his remaining two children.<sup>7</sup> While we agree that these income amounts are not significant, they are not conclusive or persuasive when considered outside the context of total assets and expenses during the relevant time period.

The evidence presented regarding respondent's efforts at acquiring the resources to pay the restitution is also lacking. Respondent stated that he applied for "various positions" with several cities and counties, the State of California, and "numerous Community Colleges," and that he "left resumes at several job fair booths," all without success. Respondent did not present any other evidence regarding his efforts toward finding work. Thus, its not clear how many applications were submitted, what positions were sought, when he applied for any of the positions, whether he was qualified for any of the positions, whether the positions were for legal or non-legal work, or whether they were for full-or part-time work. Further, respondent did not present any evidence regarding his efforts at obtaining other resources to pay. Based on the above, we conclude that respondent is culpable of wilfully failing to comply with the restitution condition of his probation and that no circumstances have been presented showing that it would be fundamentally unfair to revoke the probation in this case.<sup>8</sup>

Before turning to the remaining issues, we note that in support of his contention that revoking his probation was a "violation of due process and equal protection, and was

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<sup>7</sup> The stipulation in Taggart I indicates that respondent had six children to support, four natural and two adopted. The pleadings in the present case indicate that he has four children. The discrepancy is not explained.

<sup>8</sup> Respondent argues in his reply brief, without citation to authority or explanation, that requiring him to show inability to pay improperly shifts the burden of proof. As indicated above, the State Bar is required to prove a wilful violation of probation, and it has done so.

discriminatory based upon financial status,” respondent cites two cases, but offers no analysis and little explanation. Neither case aids respondent. (*People v. Ryan* (1988) 203 Cal.App.3d 189 [trial court did not err in ordering restitution as a condition of probation in a criminal case in the absence of any evidence or determination of ability to pay]; *Bearden v. Georgia, supra*, 461 U.S. 660 [in a criminal probation revocation proceeding for failure to pay restitution, if the probationer willfully refused to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay, the court may revoke probation and sentence the defendant to jail].)

Respondent’s constitutional claims also fail because the premise upon which they are based, that respondent’s probation is being revoked because of his financial condition, is flawed. The revocation is based on his wilful failure to pay the restitution coupled with his failure to make reasonable efforts to acquire the resources to pay or to make other good faith efforts to satisfy the restitution obligation. Our inquiry is not a dollars and cents calculation.

### 3. Aggravating and Mitigating Circumstances

The hearing judge found in aggravation that respondent had a record of prior discipline and in mitigation that respondent “faced financial difficulties.” Respondent offers no argument regarding the aggravating and mitigating factors found by the hearing judge. The State Bar agrees with the aggravating circumstances found, but asserts that the mitigating circumstance was made in error. We agree that Taggart I and Taggart II are aggravating circumstances as they are a record of prior discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>9</sup>

Financial difficulties may be considered in mitigation if they are extreme and result from circumstances that are not reasonably foreseeable or that are beyond the attorney’s control. (*In re Naney* (1990) 51 Cal.3d 186, 196-197.) Respondent bears the burden of establishing mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) Respondent failed to present a

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<sup>9</sup> All further references to standards are to these standards unless otherwise noted.

complete picture of his financial condition and therefore failed to establish that any financial problems he was facing were extreme or beyond his control. Further, the little evidence that was presented indicates that respondent's income was limited at the time he entered into the stipulation to facts and disposition in Taggart I. Thus, respondent has also failed to establish that any financial problems he experienced were not reasonably foreseeable.

In sum, we conclude that respondent wilfully failed to comply with the restitution condition of his probation. We also conclude that Taggart I and Taggart II are aggravating circumstances and that there are no mitigating circumstances present.

#### 4. Degree of Discipline

Respondent also offers no argument regarding the appropriate discipline if culpability is found, although he does appear to request an extension of the probation term instead of revocation. The State Bar argues that the actual suspension should be increased to some unspecified amount.

We have held that in probation revocation proceedings the greatest amount of discipline is warranted for violations which show a breach of a condition of probation significantly related to the misconduct for which probation was given, especially in circumstances raising a serious concern about the need for public protection or showing the probationer's failure to undertake rehabilitative steps. (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.)

Much of the misconduct in Taggart I occurred as a result of respondent's representation of a client named Chong. Chong hired respondent to sue her former employer, Golden Cheese Company, for wrongful termination and other related causes of action. Golden Cheese prevailed on a motion for summary judgement, which was attributable in large part to respondent's failure to represent Chong competently in the lawsuit. Chong hired attorney Linfield to represent her in an appeal of the Golden Cheese case and in a malpractice action against respondent. During the course of these proceedings respondent had his legal assistant contact counsel for Golden Cheese

to inform them that respondent had damaging information (the discipline stipulation does not further describe the nature of this information) concerning Chong which would be beneficial to Golden Cheese in the lawsuit. Respondent also had his legal assistant contact Linfield to inform him that respondent was aware of past illegal conduct by Chong that would “come out” if the malpractice case continued. Respondent’s purpose in contacting Linfield was to get Chong to drop the malpractice action. Respondent also issued a subpoena in the malpractice action to the Employment Development Department (EDD) seeking documents. In his declaration in support of the subpoena, respondent stated that the documents would show that Chong defrauded the EDD by receiving benefits while she was secretly working.

In another matter unrelated to Chong, respondent manufactured a claim of bias against a commissioner hearing the case in order to get the commissioner removed. In a third matter unrelated to the other two, respondent failed to return unearned fees promptly, and in a fourth unrelated matter, respondent failed to obey a court order requiring him to appear at an order to show cause hearing.

The misconduct for which the probation was given in Taggart I included the failure to pay court-ordered discovery sanctions in the malpractice action. While the restitution condition of probation was therefore directly related to the misconduct for which respondent was originally disciplined, the more serious wrongdoing in Taggart I involved misdeeds not significantly related to violations of court orders.<sup>10</sup> Nevertheless, respondent was disciplined in Taggart I in part for failing to obey court orders to appear at a hearing and to pay the sanctions, and he has again failed to obey a court order by failing to comply with the Supreme Court’s discipline order.

We also note that the court order at issue here was an order to pay the restitution. The Supreme Court has held that the “significance of restitution is its probative value as an indicator

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<sup>10</sup> Similarly, the wrongdoing in Taggart II involved blatant dereliction of respondent’s duty of loyalty to his client and was likewise not significantly related to violations of court orders.

of rehabilitation, not the repayment of the underlying indebtedness.” (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093.) 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. (*Brookman v. State Bar, supra*, 46 Cal.3d at p. 1009; *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. at p. 537.) Thus, a probationer’s attitude toward the restitution is a significant factor to be weighed. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1093.)

In the stipulation to facts and disposition in Taggart I, respondent asserted that he was financially unable to pay the sanctions. Yet, he agreed to pay restitution as a condition of probation. After the Supreme Court’s order was filed and four days before its effective date, respondent sought to discharge the restitution in bankruptcy. Having received the benefit of the bargain provided by the stipulation, respondent promptly sought to relieve himself of one of the obligations of that bargain. In addition, even though respondent has asserted continued financial hardship since before the filing of the stipulation in Taggart I, he did not seek a modification of the restitution condition of probation until after he was charged with violating that probation. Further, respondent apparently made no attempt to inform himself of the effect of the bankruptcy discharge on his duty to comply with the Supreme Court’s disciplinary order.

Respondent’s stated belief that the “restitution issue” is “moot” because Linfield “forgave” the debt is also problematic. As noted above, restitution is imposed in order to rehabilitate errant attorneys and to protect the public by forcing the attorney to confront in concrete terms the consequences of his or her misconduct. (*Brookman v. State Bar, supra*, 46 Cal.3d at p. 1009.) These important state interests are not rendered moot because the underlying indebtedness is “forgiven” by a private party. The goal is prophylactic, not pecuniary. Respondent’s demonstrated failure to recognize these most fundamental concepts causes concern and increases the risk that future similar misconduct may occur. Respondent’s attitude toward

the restitution shows indifference and warrants increasing the recommended discipline and requiring that the restitution be paid prior to respondent's resumption of active practice.

The State Bar has cited two cases in support of its position that a lengthy period of actual suspension should be imposed. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138 [one-year actual suspension]; and *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525 [two years' actual suspension].) Although both cases involved the failure to pay a restitution condition of probation, they also involved a more substantial nexus between the restitution and the gravamen of the underlying misconduct than is present here. Also, both cases involved additional violations of the same probation. There is no evidence in the record before us indicating that respondent has failed to comply with any of the other probation conditions in either Taggart I or Taggart II. Balancing all relevant factors, we conclude that the hearing judge's recommended discipline should be increased to two years' stayed suspension and two years' probation on conditions, including six months' actual suspension and payment of the restitution.

Like the hearing judge, we do not recommend that respondent be required to take and pass the professional responsibility examination or attend Ethics School, as he was ordered to do so in Taggart I and Taggart II. We also modify the language of the hearing judge's discipline recommendation to make clear that a new period of stayed suspension is being recommended.

#### **RECOMMENDATION**

For the foregoing reasons, we recommend that respondent's probation ordered by the Supreme Court in case number S061148 (State Bar Court case number 91-O-03429) be revoked, that the stay of the execution of the two-year period of suspension be lifted, that respondent be

suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. Respondent shall be actually suspended for the first six months of his probation and until he pays restitution to Michael Linfield in the amount of \$1,528 plus interest at ten percent per annum from September 19, 1997, and provides satisfactory proof of such payment to the Probation Unit.

2. During the probation period respondent shall comply with the State Bar Act and the Rules of Professional Conduct.

3. Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period.

4. Subject to the assertion of applicable privileges, respondent shall answer fully, promptly, and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial Counsel which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein.

5. Within ten (10) days of any change, respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Probation Unit, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

6. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

7. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years shall be satisfied and that suspension shall be terminated.

It is further recommended that respondent be ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule, within thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court order herein.

Finally, we recommend that the State Bar be awarded costs in this matter pursuant to section 6086.10 of the Business and Professions Code and that those costs be payable in accordance with Business and Professions Code section 6140.7.

OBRIEN, P.J.

We Concur:

STOVITZ, J.  
WATAI, J.

Case No. 99-PM-10316

In the Matter of

TIMOTHY LEE TAGGART

Hearing Judge: Hon. Michael D. Marcus

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