

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

JAMES T. MORIARTY

A Member of the State Bar

[No. 88-C-14191]

Filed November 26, 1990

SUMMARY

Respondent, a member of the Universal Life Church, filed three annual federal tax returns claiming fraudulent deductions for charitable contributions. In 1988, he was convicted in federal court of making and subscribing a false income tax return. The conviction was reported to the California Supreme Court, which found that the offense involved moral turpitude, placed respondent on interim suspension, and referred the matter to the State Bar for a hearing, report and recommendation as to the discipline to be imposed. The Supreme Court vacated the interim suspension order seven months after its effective date.

The State Bar Court hearing referee recommended that respondent be suspended for seven months, with credit for the seven months he had been on interim suspension, and that he be placed on probation for four years, on condition that he abide by the probation conditions of his criminal sentence. (Daniel J. Modena, Hearing Referee.)

The examiner sought review, asserting that the recommended discipline and the findings of fact contained in the referee's decision were insufficient. The review department modified the referee's decision to expand the factual findings describing the circumstances of the offense, but found the recommended discipline appropriate, except that it added probation conditions consistent with those usually imposed in disciplinary cases. Although noting the application of standard 3.2, which recommends disbarment for crimes involving moral turpitude, the review department declined to recommend disbarment, citing respondent's strong showing of mitigating circumstances, the disposition of similar matters by the Supreme Court, and the fact that respondent's criminal co-defendant, also an attorney, whose culpability was more aggravated, was actually suspended for only ninety days.

COUNSEL FOR PARTIES

For Office of Trials: Mara J. Mamet

For Respondent: Judd C. Iversen, Mark R. Vermeulen

HEADNOTES

- [1] **135 Procedure—Rules of Procedure**
 166 Independent Review of Record
The review department must independently review all matters coming before it, and may adopt findings of fact, conclusions of law and recommendations at variance to those of hearing department. (Rule 453, Trans. Rules Proc. of State Bar.)
- [2 a, b] **146 Evidence—Judicial Notice**
 191 Effect/Relationship of Other Proceedings
 1091 Substantive Issues re Discipline—Proportionality
 1691 Conviction Cases—Record in Criminal Proceeding
At respondent's request, in a conviction proceeding, the review department took judicial notice of the record in a disciplinary case involving another attorney who was respondent's co-defendant in the underlying criminal matter. The discipline imposed on the co-defendant was considered in determining the appropriate discipline for respondent.
- [3 a, b] **521 Aggravation—Multiple Acts—Found**
Where respondent filed three annual federal tax returns containing false information as to charitable contributions, respondent's misconduct involved multiple acts of misconduct separated by time sufficient to allow the member to consider his actions, and therefore constituted a factor in aggravation.
- [4 a, b] **691 Aggravation—Other—Found**
Respondent's extensive law enforcement background, first as FBI agent and then as deputy district attorney, was factor in aggravation in conviction referral matter as it gave respondent special awareness of law's requirements.
- [5 a, b] **801.30 Standards—Effect as Guidelines**
 802.69 Standards—Appropriate Sanction—Generally
In determining the appropriate sanction, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines and which do not mandate the discipline to be imposed. Each case must be resolved on its own particular facts and not by application of rigid standards.
- [6] **1091 Substantive Issues re Discipline—Proportionality**
In assessing appropriate discipline, the review department considers whether the recommended discipline conforms to or is disproportionate to prior decisions of the Supreme Court based on similar facts.
- [7] **801.47 Standards—Deviation From—Necessity to Explain**
When the review department's decision departs from the discipline recommended by the standards, the reasons for the departure should be made clear, for the benefit of the Supreme Court and the parties.

- [8 a-e] **801.41 Standards—Deviation From—Justified**
1091 Substantive Issues re Discipline—Proportionality
1092 Substantive Issues re Discipline—Excessiveness
1516 Conviction Matters—Nature of Conviction—Tax Laws
1552.52 Conviction Matters—Standards—Moral Turpitude—Declined to Apply
Disbarment would be excessive in case arising out of criminal conviction for filing false federal income tax return, even though offense involved moral turpitude, based on comparable Supreme Court cases and given respondent's compelling showing of mitigation, including absence of any prior or subsequent misconduct; extreme emotional difficulties arising from an amputation; respondent's acknowledgment of his misconduct and his candor and cooperation with the State Bar; a persuasive showing of respondent's good character and high esteem in the community; family problems existing at the time of the misconduct; and the fact that the misconduct did not involve the practice of law.
- [9] **801.41 Standards—Deviation From—Justified**
802.30 Standards—Purposes of Sanctions
1549 Conviction Matters—Interim Suspension—Miscellaneous
1552.59 Conviction Matters—Standards—Moral Turpitude—Declined to Apply
In conviction referral matter in which interim suspension had been imposed and later vacated after seven months, review department declined to recommend total of one year actual suspension, even though possibly appropriate, because resulting additional four-month suspension would have been disruptive and punitive rather than achieving the purposes of disciplinary proceedings (protection of the public, courts and legal profession as well as rehabilitation in proper cases).

ADDITIONAL ANALYSIS

Mitigation

Found

- 710.10 No Prior Record
- 725.11 Disability/Illness
- 735.10 Candor—Bar
- 740.10 Good Character
- 745.10 Remorse/Restitution
- 750.10 Rehabilitation
- 760.11 Personal/Financial Problems
- 791 Other

Discipline

- 1613.08 Stayed Suspension—2 Years
- 1615.04 Actual Suspension—6 Months
- 1616.50 Relationship of Actual to Interim Suspension—Full Credit
- 1617.06 Probation—1 Year

Probation Conditions

- 1022.50 Probation Monitor Not Appointed
- 1024 Ethics Exam/School

Other

- 1521 Conviction Matters—Moral Turpitude—Per Se
- 1541.20 Conviction Matters—Interim Suspension—Ordered
- 1543 Conviction Matters—Interim Suspension—Vacated

OPINION

NORIAN, J.:

An examiner for the Office of Trial Counsel, State Bar of California, has asked that this department review the discipline recommendation of a State Bar Court hearing department referee's decision that respondent James T. Moriarty, a member of the State Bar of California since June of 1974 with no prior record of discipline, be suspended from the practice of law for seven months and be placed on probation for four years. The referee determined that respondent had fulfilled this requirement because of his seven-month interim suspension by the Supreme Court. The examiner contends that the referee's decision contains insufficient findings of fact and that the discipline recommendation is also insufficient.

This matter is a conviction referral originated by the Supreme Court (Bus. & Prof. Code, §§ 6101-6102; Cal. Rules of Court, rule 951) as a result of respondent's conviction in federal court of a one count violation of 26 U.S.C. section 7206(1), making and subscribing a false income tax return. The Supreme Court determined the conviction to be a crime involving moral turpitude and referred the matter to the State Bar Court for a hearing, report and recommendation as to the discipline to be imposed.

[1] Rule 453, Transitional Rules of Procedure of the State Bar of California, prescribes that this department independently review the record on all matters that come before it. The rule also states that the review department may adopt findings, conclusions and recommendations that are at variance with those of the hearing department.

We have concluded, based on our independent review of the record, that the hearing panel's decision should be modified to: expand the findings of fact; include specific findings with respect to the issues of mitigation and aggravation; and set forth probation conditions customary to State Bar proceedings. With these modifications we find the discipline recommended by the referee to be appropriate.

BACKGROUND

The parties filed a stipulation as to facts with the hearing panel on May 16, 1989, which we adopt as findings of fact. The stipulated facts demonstrate that:

On April 8, 1987, respondent was indicted in federal district court on three counts of having violated 26 U.S.C. section 7206(1), making and subscribing false income tax returns. On January 6, 1988, respondent pleaded guilty in the United States District Court, Northern District of California, to a violation of 26 U.S.C. section 7206(1). Judgment was entered on March 1, 1988, and respondent was sentenced to two years imprisonment, execution of which was stayed on the condition that he serve four years probation. No appeal was filed.

Effective March 25, 1988, the Supreme Court of California issued an order holding that respondent's criminal conviction involved moral turpitude. (Bus. & Prof. Code, § 6102 (a).) The order suspended respondent from the practice of law pending final disposition of the federal court proceeding. On October 12, 1988, the Supreme Court filed an order which denied respondent's request for a hearing before the State Bar Court on the issue of whether his conduct involved moral turpitude. The Supreme Court then referred the matter to the State Bar Court for a hearing, report and recommendation as to the discipline to be imposed. The Supreme Court also, upon request of respondent, stayed the interim suspension order upon good cause shown.

The record shows that the State Bar Court hearing was held on May 16, 1989, before a one-member hearing panel. The referee's decision was filed on August 1, 1989. The referee recommended that respondent be suspended from the practice of law for a seven-month period, "of which said suspension is hereby acknowledged and completed" which presumably made reference to the period of interim suspension previously imposed by the Supreme Court. The referee also imposed four years probation on condition that respondent complete all the terms and conditions of the probation ordered by the federal court.

The examiner requested our review on the grounds that the referee's findings of fact were not sufficient and that the discipline recommendation was insufficient. [2a] At oral argument before this department on March 28, 1990, respondent's counsel asked that we take judicial notice of the discipline decisions of the hearing department and the review department concerning *In the Matter of Terrence W. Andrews* (July 5, 1989, No. 88-C-13412 [Bar Misc. 5659]) State Bar Ct. Hrg. Dept.; same cause (November 29, 1989) State Bar Ct. Review Dept. [nonpub.; former Review Dept.]. Terrence W. Andrews (Andrews) had been a co-defendant in the same federal indictment as respondent, with somewhat similar charges. Andrews had pleaded guilty in federal court to the same charge as respondent, but had received a lesser discipline on recommendation by the State Bar Court.

Shortly following oral argument respondent submitted the State Bar Court decisions in *In the Matter of Andrews, supra*. This department, by letter of April 10, 1990, asked counsel for the parties jointly to submit additional documents relating to the Supreme Court and State Bar Court actions on the matters concerning respondent and Andrews. Upon receipt of these documents the matter stood submitted.

FINDINGS OF FACT

The only finding of fact contained in the referee's decision is the statement that "after reviewing oral and written evidence and the stipulation by the parties heretofore filed that there is sufficient enough [sic] evidence in mitigation that the sentence herein-after imposed by this Hearing Officer is mitigated by the acts and actions of the Respondent's pro bono work throughout his legal career and his rehabilitation since the misconduct occurred." As this statement does not set out findings of fact in this matter, we shall do so.

A. The Facts of the Underlying Federal Court Case

Respondent pleaded guilty to one count of the indictment and declared that he "knowingly overstated the amount of deductible contributions to

which he was allegedly entitled" in the amount of \$14,177 for the 1982 tax year. The record showed that respondent had become a member of the Universal Life Church (ULC) of Modesto, California, for a payment of approximately \$25 and then purchased by mail a ULC chapter for a nominal amount. He claimed on tax returns for the years 1980, 1981 and 1982 that he had made charitable contributions to his chapter of the ULC equaling fifty percent of his adjusted gross income. Fifty percent of adjusted gross income is the percentage limit for charitable contributions allowed to an individual by federal law. (26 U.S.C. § 170.) His claimed contributions were in the amounts of \$28,915, \$28,900 and \$14,177 for the respective years.

These contributions consisted of personal living expenses that respondent considered church related. Among other things, he claimed his home swimming pool to be a baptismal font, and payments for the education of his children at church related colleges and the trips taking him there, as religious educational expenses. Vacation trips were considered missionary outreach or religious retreats.

While holding down a full-time position as deputy district attorney, respondent did conduct weekly religious services at a rest home for the aged, who were of meager means, for quite a number of years. He also conducted ceremonies, including weddings and baptisms. However, there is no evidence in the record, within his chapter of the ULC, of the existence of the elements of what normally would be considered a distinct church organization and parish.

B. Facts Involving Mitigation and Aggravation

Respondent is a 1955 graduate of the University of Louisville Law School. From 1955 to 1961 he worked as a special agent of the Federal Bureau of Investigation (FBI). Between 1961 and 1968 he was employed as an investigator and special agent for private organizations. From 1969 to 1974 he was an investigator for the District Attorney's Office of Contra Costa County. Upon passing the California bar exam in 1974 he joined the office as a deputy district attorney and was employed there until he retired in October of 1986.

In 1979 after being diagnosed as having a malignant tumor on an ankle, respondent's leg was amputated below the knee. In January of 1980 an Internal Revenue Service (IRS) agent conducted an audit of respondent's 1977 federal income tax return. The agent disallowed as a business expense certain mileage deductions that respondent had taken when he conducted pro bono teaching activities at a federal correctional institution, and reclassified them as a charitable expense. This reclassification provided a lesser tax deduction. During the course of the meeting the subject of respondent's amputation was discussed. The agent then asked to see his leg stump and prosthesis. Respondent detached the artificial limb for the agent's closer inspection. After doing so, the respondent needed the agent's help in seating the stump within the prosthesis.

The IRS agent's conduct greatly upset respondent. Respondent said nothing to the agent at the time. Respondent related, however, that he stewed about the agent's conduct for a long period. At about this same time, respondent having learned from a friend about the ULC, did some investigation and became a member. His intention was that by accumulating more taxable deductions he would pay back the IRS and get even for the humiliation and embarrassment the agent had put him through. Thereafter, for three years starting in 1980, he used his ULC charter as a tax shelter which effectively lowered his federal income tax payment.

Respondent has no prior disciplinary record. Since this offense he has practiced law for more than six years, from 1983 to 1986 as a deputy district attorney of Contra Costa County, and as a sole practitioner from 1986 to 1990 (other than the period of interim suspension).

During the period of the misconduct, respondent's mother was suffering from diabetes, cancer and severe depression. His mother died in January of 1981. Following his mother's death, his father, who was an alcoholic, moved into his house. In addition, respondent was under both a severe amount of pain and stress in his professional and social activities as a result of his new life as an

amputee. All these facts were cited in a psychologist's evaluation of respondent in March of 1989 just prior to the hearing. In a statement also submitted to the referee at the hearing, respondent related that he had regularly attended weekly counseling meetings, that he had come to realize that his real anger was caused by the loss of his leg and not entirely by the conduct of the IRS auditor and that he had come to better understand the causes of his stress. He has continued to participate voluntarily in recognized counseling programs.

Respondent has fully cooperated in the State Bar's investigation and disposition of this matter. He has been candid and forthright in recognizing his misconduct and, without equivocation, has expressed regret for his actions. The referee, in his decision, listed these factors as the most impressive finding of the hearing. Letters testifying to respondent's good character were submitted from members of the community among whom were judges and lawyers. They were aware of his misconduct as it had been reported thoroughly in the local media. He has also continued to participate actively in community service.

[3a] While the decision of the referee did not indicate any factors in aggravation, the record shows that respondent's misconduct was not a one-time occurrence. It was an act that he repeated on three occasions, each a year apart, when he filed false income tax returns using deductions that were not genuine. [4a] We also note that respondent was a former FBI agent trained in investigation of violations of federal law as well as an assistant district attorney prosecuting state law violators. This made his misconduct additionally serious since it came from one with extensive background in law enforcement who therefore had special awareness of the requirements of the law.

DISCUSSION

The Supreme Court referred this matter to the State Bar for a report and recommendation as to the appropriate degree of discipline to be imposed for respondent's misconduct. [5a] In determining the appropriate sanction, we start with the Standards for

Attorney Sanctions for Professional Misconduct (Rules Proc. of State Bar, div. V)¹ which serve as our guideline. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) [6] We also will consider if the recommended discipline conforms to or is disproportionate to prior decisions of the Supreme Court based on similar facts. (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 3.2 calls for disbarment for a conviction of a crime involving moral turpitude. It states that only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. It also states that in those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

[5b] The Supreme Court has recognized that the standards provide a guideline and do not mandate the discipline to be imposed. (*Boehme v. State Bar* (1988) 47 Cal.3d 448, 454; *Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 550.) The Court has also held that each case must be resolved on its own particular facts and not by application of rigid standards. (*In re Nadrich* (1988) 44 Cal.3d 271, 278.)

[7] Should this department in its decision depart from the standards, it is helpful to the Court and the participants in the matter that we make the reasons clear. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

[8a] When weighing the misconduct in this case against the factors in aggravation and mitigation we find that imposition of disbarment pursuant to standard 3.2 is excessive. Also, as will be discussed later, previous decisions of the Court that involved the filing of a false income tax return had findings of fact which were more egregious and in which the discipline was, as a result, more severe than what is appropriate for this matter.

[3b] This department does have serious concern that this misconduct occurred over a substantial

period of time. Respondent filed three income tax returns one year apart and took charitable deductions that were without basis. While it is indicated that the decision to falsify the tax return was arrived at in the spring of 1980, the two subsequent false filings, a year apart, do not support any claim of impulsive aberrational behavior. The year separations between the filings illustrate that these were multiple acts. Respondent had ample time to reflect, to reconsider and to study the consequences of his actions. [4b] He had a special awareness of law enforcement concerns as a former FBI agent and prosecutor. He chose to continue. He stopped taking the deductions subsequent to June of 1982 when agents from the IRS came to his office to investigate his returns.

[8b] While acknowledging the seriousness of the misconduct, it is also evident that respondent has made a most compelling case in mitigation. Admitted to the bar in 1974, respondent had practiced law for seven years without any misconduct prior to filing his first false tax return. Since his final false filing, he has practiced law for six years, again without incident.

[8c] At the time his misconduct occurred he suffered extreme emotional difficulties when his leg was amputated below the knee. The evaluation by the psychologist indicates that, in addition to this amputation, other family pressures and personality factors affected respondent and all came together at this particular point in time causing this exercise of bad judgement. The psychologist's report stated that respondent has learned to deal with negative situations such as he experienced at the time of his misconduct. Respondent has participated in formal counseling sessions and now participates in voluntary programs.

[8d] Respondent was cooperative and displayed spontaneous candor in the investigation and the proceedings of this matter. While there was widespread publicity in the media regarding respondent's tax conviction and while knowing the circumstances of the misconduct, a diverse cross section of the

1. Hereafter all references to the standards shall mean the Standards for Attorney Sanctions for Professional Miscon-

duct, Rules of Procedure of the State Bar, division V unless otherwise indicated.

community, which included individuals from the courts and the bar, submitted letters to the federal court which were made a part of this record, attesting to his good character and to the high esteem in which respondent was held. He has continued a commitment of service to his community.

[8e] Respondent has fully acknowledged his misconduct. His misconduct was not related to the practice of law.

We are aware of two cases decided by the Supreme Court that involve the filing of false income tax returns but neither involves knowingly overstating the amount of deductible contributions. *In re Hallinan* (1957) 48 Cal.2d 52 involved an attorney who in violation of 26 U.S.C. section 145 consistently failed, over a four-year period, to account fully to the IRS for income received in the practice of law, and who had a planned pattern of taking fees in cash with an intent not to report receipt of these fees. The attorney had a prior record of misconduct for acts of deceit practiced upon a fellow attorney. The attorney received a three-year actual suspension.

In re Distefano (1975) 13 Cal.3d 476, the second case, concerned an attorney who in violation of 18 U.S.C. section 287, over a two-year period, filed numerous income tax refund claims for living persons without their knowledge or consent. In his filing of these refund claims he used the individuals' names and social security numbers and by so doing he exposed these individuals to the possibility of investigation by the IRS. He also had not been in practice long enough to establish a showing of good character necessary for membership in the State Bar. The attorney was disbarred.

These cases involve misconduct that is more serious than that of respondent. In *Hallinan*, the failure to report had to do with the practice of law, contained overt acts of deceit and the attorney had committed prior misconduct where deceit was also involved. In *Distefano*, the false refund filings were in greater number, the filings were falsely subscribed to unknowing persons exposing them to possible future investigation, and the attorney's misconduct occurred within four years after being admitted to the practice of law.

In other federal income tax matters found to have involved moral turpitude, an attorney, who was convicted of conspiracy to impede the lawful function of the IRS in violation of 18 U.S.C. section 371, participated in a tax shelter plan and signed a backdated conditional sales contract for his automobile. There was strong mitigation. The Supreme Court finding the tax violation involved moral turpitude ordered discipline of one year suspension, the execution of which was stayed, with probation for three years. No actual suspension was ordered. (*In re Chira* (1986) 42 Cal.3d 904 [the Court noted that the attorney, so devastated by the conviction, was unable to practice law for a period of three years and did not stand to gain any tax benefits].)

Another case also involved conviction of conspiracy to impede the lawful function of the IRS in violation of 18 U.S.C. section 371. (*In re Chernik* (1989) 49 Cal.3d 467.) There the attorney was found to have made use of backdated documents to support unlawful tax deductions for a client in a real estate tax shelter scheme allocating partnership losses to a partner prior to its entry into the partnership. The Court, while finding many similarities to *In re Chira*, *supra*, 42 Cal.3d 904, distinguished the attorney's situation in *Chernik* from that in *Chira* because Chernik's misconduct was directly related to the practice of law. The Court suspended Chernik for a period of three years, the execution of which was stayed, and placed him on probation for three years including actual suspension for one year.

[2b] Andrews, who was named in the same indictment as respondent, was convicted in federal court under the same code section as respondent of a one count violation of making and subscribing a false income tax return. In the indictment, which was made part of the State Bar Court record, Andrews had additionally been charged with aiding, counseling and advising in the preparation of respondent's false deductible contribution claims on his income tax return. It is noted that Andrews' federal probation conditions included participation in a residential community treatment center and a home electronic detention program for eight months except while he was at work during the day.

On August 20, 1990, the Supreme Court adopted the State Bar Court recommendation of discipline for Andrews that called for two years suspension, the execution of which was stayed, two years probation with conditions, and a 90-day actual suspension. (*In the Matter of Terrence W. Andrews, supra*, Supreme Ct. order filed Aug. 20, 1990 [Bar Misc. 5659].)

In conclusion, we analyze respondent's misconduct, the aggravating and mitigating circumstances, the applicable standards and Supreme Court cases we deem comparable, and the fact that respondent has already completed, during 1988, an approximate seven-month suspension ordered by the Supreme Court at the time of his conviction referral. [9] While suspension totaling one year might also have been justified in view of the standards, case law, the seriousness of the misconduct, and the time period involved, notwithstanding the compelling mitigation found, the recommendation of the referee is not inappropriate. In so determining we also are mindful that the on-again off-again character of an additional four plus months of suspension would in this case be disruptive and punitive rather than achieve the purpose of attorney discipline as set forth in standard 1.3 (protection of the public, courts and legal profession as well as rehabilitation in the proper case).

We therefore adopt the actual suspension recommendation of the hearing referee and also recommend that respondent be placed on probation to run concurrent with the remaining period of his four year federal probation, but that the probations conditions be those that are used by the State Bar Court.

FORMAL RECOMMENDATION

For the foregoing reasons, we recommend that the Supreme Court order that respondent be suspended from the practice of law in this state for a period of two years; that execution of such order be stayed; and that respondent be placed on probation concurrent with the remainder of his four-year federal probation requirement on the following conditions:

1. That respondent be actually suspended from the practice of law in this state for the length of time he was placed on interim suspension by the Supreme

Court, but that respondent be credited for that period of interim suspension, from March 25, 1988, to October 12, 1988, as fulfillment of this actual suspension condition;

2. That during the period of probation, he shall comply with the probation conditions of his federal court conviction, *United States v. Moriarty* (March 1, 1988) U.S. Dist. Ct., N.D. Cal. CR-87-0265-WWS-2;

3. That during the period of probation, he shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;

4. That during the period of probation, he shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Office of the Clerk, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of probation is less than 30 days preceding any of said dates, he shall file said report on the due date next following the due date after said effective date):

(a) in his first report, that he has complied with all provisions of the State Bar Act, Rules of Professional Conduct and the conditions of his federal probation since the effective date of said probation;

(b) in each subsequent report, that he has complied with all provisions of the State Bar Act, Rules of Professional Conduct and the conditions of his federal probation since the effective date of said probation.

(c) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) hereof;

5. During the period of probation, Respondent shall maintain on the official membership records of the State Bar, as required by Business and Profes-

sions Code section 6002.1, his current office or other address for State Bar purposes and all other information required by that section. Respondent shall report to the membership records office of the State Bar all changes of information as prescribed by section 6002.1;

6. That, except to the extent prohibited by the attorney-client privilege and the privilege against self-incrimination, he shall answer fully, promptly and truthfully to the Presiding Judge of the State Bar Court or designee at the Respondent's office or an office of the State Bar (provided, however, that nothing herein shall prohibit the Respondent and the Presiding Judge or designee from fixing another place by agreement) any inquiry or inquiries directed to him personally or in writing by said Presiding Judge or designee relating to whether Respondent is complying or has complied with these terms of probation;

7. That the period of probation shall commence as of the date on which the order of the Supreme Court herein becomes effective;

8. That at the expiration of said probation period, if he has complied with the terms of probation, said order of the Supreme Court shall be satisfied and the probation shall be terminated.

It is further recommended that Respondent be directed to take and pass the Professional Responsibility Examination given by the National Conference of Bar Examiners within one (1) year from the date of the disciplinary order in this matter, and furnish satisfactory proof of such to the probation department of the State Bar Court, Los Angeles, California.

We concur:

PEARLMAN, P.J.
STOVITZ, J.