PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed August 9, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 13-PM-14581
	)	
MANSFIELD COLLINS,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 104049.	)	
	)	

In 2005, a federal bankruptcy court found that Mansfield Collins collected $258,000 in fees to which he was not entitled and charged an additional $226,213.77, also in unwarranted fees. Arising from this judgment, in 2010, Collins stipulated in the State Bar Court to culpability for charging and collecting unconscionable fees and voluntarily agreed to a one-year stayed suspension and a three-year probation with conditions, including a three-month actual suspension and that he pay his former clients $258,000 in restitution plus interest accruing from 2005. Further, he agreed to pay restitution on a schedule: $100,000 by February 2012; another $100,000 by February 2013; and the remaining principal plus interest by January 2014.

Collins received a modification to delay the first $100,000 payment deadline to February 2013. By that date, he had paid only $2,500, and by August 2013, he had made only five payments totaling $22,500 in restitution. Thus, the Office of Probation of the State Bar (Probation) moved to revoke his probation. Finding that Collins had violated his probation, a hearing judge granted the motion and recommended discipline, including that the stay of execution of the one-year suspension be lifted and that Collins should be actually suspended for six months and until he makes restitution.

Collins seeks review and argues that the hearing judge abused his discretion and committed numerous errors of law. In particular, he contends the judge should have required Probation to prove that he had the ability to pay restitution. He requests that we reverse the judge's order and conduct an independent review of his ability to pay restitution. Probation generally supports the judge's recommendation and does not seek review, but asks us to impose the full one-year actual suspension that was earlier stayed.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and conclude that the hearing judge properly granted the motion to revoke. We agree with Probation, however, that Collins should be actually suspended for the longest period available, one year. Collins agreed to timely pay the six-figure restitution that the bankruptcy court found due. Yet he failed to adhere to his agreement—all the while remaining eligible to practice law but for a three-month period in 2011. These facts warrant a full revocation and cause us to exercise our discretion and order Collins placed on involuntary inactive status effective three days after service of this opinion.

Also, in light of facts occurring after the evidentiary hearing, we find that Collins should not be required to make any further payment in restitution because he has since settled the debt owing to his former clients.

I. PROCEDURAL BACKGROUND

Because this matter has an extensive procedural background, we set forth a summary of the Hearing Department proceedings. On August 15, 2013, Probation filed a motion to revoke probation, accompanied by the assigned probation deputy's declaration and supported by exhibits containing Collins's probation file; Probation also requested a hearing. (Rules Proc. of State Bar, rule 5.314(A) [motion to revoke must be accompanied by declaration stating all facts

relied on in support and supported by evidence].)[1] Probation asked the hearing judge to recommend actual suspension for the full one-year period of the stayed suspension (rule 5.312 [court may recommend up to imposition of actual suspension equal to period of stayed suspension]) and to order Collins placed on involuntary inactive status (Bus. & Prof. Code, § 6007, subd. (d)).

On September 9, 2013, Collins filed an opposition, accompanied by his and other declarations and with exhibits in support; he also requested a hearing. (Rule 5.314(B) [opposition must be accompanied by declaration(s) stating all facts relied on in support and supported by evidence].)

The parties withdrew their hearing requests and agreed to submit the revocation motion on the pleadings, citing to rule 5.314(H) (if no hearing is held, court will receive into evidence declarations and exhibits submitted in support of and in opposition to motion). On October 18, 2013, the judge issued an order revoking probation and recommending the imposition of a six-month actual suspension and until restitution is made. The judge declined to place Collins on involuntary inactive status.

Collins filed a request for review, and the parties filed their briefs. In his rebuttal brief, Collins sought to augment the record with his medical records. We denied his request. Collins then filed a motion in the Hearing Department, which was denied but which had the effect of vacating his request for review. (Rule 5.151(C).) Collins filed additional motions in the Hearing Department, effectively keeping his case in limbo, until he filed the pending request for review[2]

[1] All further references to rules are to the Rules of Procedure of the State Bar, unless otherwise noted.

[2] In the list of Findings of Facts and Conclusions of Law in Dispute included at the beginning of Collins's opening brief, he appears to challenge some of these Hearing Department orders. To the extent we can discern the basis for his challenge, it appears to be an attack on the underlying proceeding. We do not reach this issue as Collins may not collaterally attack the

on May 29, 2015. The parties then filed a new round of briefs. But, on September 14, 2015, the parties filed a request for settlement conference on review, suspending consideration of the pending review. On February 16, 2016, we received notice that the parties were "unable to reach a compromise," and we set the matter for oral argument on May 12, 2016.

On April 14, 2016, Collins again sought to add his medical records and other mitigation evidence. Collins also submitted evidence of a purported settlement agreement and release of all claims with his former clients from November 16, 2015 (Settlement Agreement) and evidence of two checks paid on that agreement. We denied the motion without prejudice to Collins submitting "judicially noticeable facts or stipulated facts . . . bearing on restitution" (rule 5.156(B)) and invited the parties to discuss the issue of restitution at oral argument.

On May 9, 2016, Collins filed a request to take judicial notice of the Settlement Agreement, or, alternatively, to admit judicially noticeable facts therein. Probation opposed the request. At oral argument, however, Probation conceded that the Settlement Agreement was an agreement between Collins and his former clients to settle the debt then owing to the former clients. Thus, we grant Collins's May 9, 2016 request in part and admit those facts, as discussed below, "bearing on restitution . . . occurring after the evidentiary proceedings before the hearing judge ended." (Rule 5.156 (B).)

II. UNDERLYING PROCEEDING

Collins was admitted to practice law in California on September 27, 1982. He has one prior record of discipline, State Bar Court case number 03-O-02352, which underlies this probation revocation proceeding.

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underlying proceeding in a probation revocation proceeding. (See *In re Kirschke* (1976) 16 Cal.3d 902, 904 [attempt to collaterally attack attorney's criminal conviction rejected].)

A. In 2005, a Bankruptcy Court Entered Judgment Against Collins

In the underlying proceeding, the parties stipulated to the following facts.

Aurelio, Flavio, Francisco, and Filiberto Tenorio (the Tenorio brothers) owned and operated restaurants in Arizona and California. Some members of the Tenorio family were arrested on criminal charges relating to their restaurant business. In February 1998, Collins agreed to be paid $10,000 for all his legal work in connection with his representation of Aurelio Tenorio. No other fee agreement was made in writing. Between February 1998 and June 2002, Collins represented the Tenorio brothers in various legal matters and collected approximately $268,000 in attorney fees and charged another $226,213.77. In March 2003, Flavio Tenorio filed a malpractice action against Collins in Los Angeles County Superior Court.

Earlier, in June 1998, the Tenorio brothers had agreed to sell their restaurants' trademarks and names to LEASCO, Inc., to raise money to pay their attorney fees, criminal fines, and tax debt. A dispute arose between the Tenorio brothers and LEASCO over the sale, and the Tenorio brothers filed suit against LEASCO in Los Angeles County Superior Court. In December 2003, LEASCO filed for bankruptcy protection in United States Bankruptcy Court, District of Arizona, and both the malpractice action and the LEASCO dispute were removed to the bankruptcy court in Arizona.

On February 24, 2005, the bankruptcy court entered a judgment against Collins in favor of the Tenorio brothers. The court found Collins was "entitled to a single fee of $10,000 from Aurelio Tenorio, and has been paid in full." Further, the court ordered that Collins pay the Tenorio brothers $258,000 and dismissed Collins's claims for an additional $226,213.77 as the claims were "unreasonable, excessive, not properly itemized, and not within the contract of the parties." Subsequently, Collins filed various post-trial motions challenging the decision. He also

appealed to the federal district court and to the Ninth Circuit Court of Appeals. All appeals were decided against Collins.[3]

B. In 2010, Collins Stipulated to Culpability and Agreed to Pay Restitution or Settle His Debt to the Tenorios

As to culpability, Collins stipulated that "[b]y charging and receiving $258,000 in attorney's fees when he had not properly documented or contracted for those fees, and then by charging an additional $226,213.77 in fees when he was not entitled to those fees, [Collins] entered into an agreement for, charged, or collected an unconscionable fee in willful violation of Rule of Professional Conduct 4-200(A)." No aggravating circumstances were involved, and Collins received mitigation for his lack of a prior record of discipline and for candor and cooperation. Collins agreed to a one-year suspension, execution stayed, and probation for three years subject to the conditions of probation, including as relevant to this proceeding: (1) a 90-day actual suspension;[4] and (2) the submission of written quarterly reports.

In addition, Collins stipulated that he would pay restitution to the Tenorio brothers in the amount of $258,000 with interest accruing at 10% per annum from January 18, 2005. He agreed to pay $100,000 before the expiration of the first year of probation, another $100,000 interest before expiration of the second year of probation, and the remainder plus all accrued interest no later than 30 days prior to the expiration of the third year of probation. The stipulation also included language stating: "If the Respondent and the Tenorio brothers reach a stipulated

[3] In his briefs on review, Collins argues that the 2005 bankruptcy court judgment was declared void by a district court in California in 2014. We reject this claim because it is not supported by evidence in the record (rule 5.156(A)), and because we do not consider collateral attacks on the underlying proceedings in a probation revocation proceeding.

[4] Former standard 2.7 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, provided that a violation of rule 4-200 of the Rules of Professional Conduct "shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances." The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards. All further references to standards are to this revised source.

agreement for a payment that will be considered by the Tenorio brothers as satisfaction in full of the judgment amount, that agreed amount shall be considered the full amount of the restitution owed by Respondent to the Tenorio brothers under the terms of this Stipulation." The stipulation did not state that the settlement would be considered payment in full only if effectuated during the probationary period.

On January 11, 2011, the Supreme Court issued an order imposing the stipulated discipline, effective February 10, 2011. (*In re Mansfield Collins on Discipline* (S187650).) Collins served his 90-day suspension from February 10 through May 11, 2011. He has been eligible to practice law since then.

III. PROBATION VIOLATIONS

Probation must prove willful probation violations by a preponderance of the evidence. (Rule 5.311.) Bad faith or evil intent is not required to find culpability. (*In the Matter of Potack, supra,* 1 Cal. State Bar Ct. Rptr. at p. 536.) Rather, a general willingness to commit an act or permit an omission is sufficient. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Such willfulness does not require either knowledge of the probation provisions or that the attorney intended the consequences of his or her acts or omissions. (*Ibid*.) All that is necessary is "proof that [the attorney] intended the act or omission itself." (*Ibid*.)

The parties do not dispute the key facts underlying the hearing judge's findings, although Collins argues that the evidence does not prove that he willfully violated his probation. As analyzed below, we find the hearing judge correctly found that Collins willfully failed to comply with two terms of his probation—filing quarterly reports and timely paying restitution.

A. Collins Violated the Condition Requiring Timely Quarterly Reports

Pursuant to the Supreme Court order, Collins was to file quarterly probation reports, including one on October 10, 2011. Collins filed that report one day late on October 11, 2011.

Although this was a literal violation of Collins's probation conditions, taken together with Collins's timely filing of his other probation reports, it does not warrant additional discipline.

B. Collins Violated the Condition Requiring Restitution

1. Collins Failed to Make Required Payments Despite Seeking Modifications

Collins never put himself on a consistent or adequate payment schedule to discharge his admitted obligations. Instead, he made only five payments, amounting to just $22,500, over a two-and-a-half-year period. At the same, he made three motions to modify his restitution obligation. He marshalled various arguments in an effort to show that his circumstances had changed since he stipulated to discipline. (Rule 5.300.) As detailed below, one motion was granted in part; two were denied.

First, Collins had paid only $2,500 of the required $100,000 by the first deadline, February 10, 2012. So he filed a motion for an extension. He stated that in November 2010, he had been diagnosed with "an aggressive stage of prostate cancer." Also, he said his home office had been seriously damaged by a waterpipe break, that his 2011 earnings were $60,000 less expenses, and that he lacked a strong enough credit rating to borrow money. He sought a two-year extension of time to meet the first deadline but affirmed his commitment to pay restitution: "The Petitioner believes that with his medical treatments and side effects out of the way he can focus full-time on his practice and can significantly earn more in 2012 than he did in 2011." Probation opposed the motion and argued that Collins's financial declaration did not prove his claimed inability to pay restitution. (Rule 5.302(A) ["[c]lear and convincing evidence is required to support a motion to modify"].) Finding good cause, the hearing judge granted the motion in part and extended the time to make the first and second payments to February 10, 2013, and January 11, 2014, respectively. (Cal. Rules of Court, rule 9.10(c)(2).) The final deadline for full payment of the principal plus interest remained January 11, 2014.

Second, having made *no further restitution* by the new February 2013 deadline, Collins moved to extend the time for payment to January 31, 2014. He again claimed financial difficulties and argued he had: (1) tried to increase his income through print ads; (2) tried and failed to obtain personal and business loans; (3) tried and failed to reach a settlement with the Tenorio brothers; and (4) been harmed by the Internet posting of his discipline by the State Bar and concurrent posting by for-profit third parties. He said he was marked by a permanent "scarlet letter." His financial declaration showed monthly income and expenses of $10,595 and $9,604, respectively, but did not show why Collins failed to pay any of the difference toward restitution. He also claimed to have paid an additional $20,000 in restitution with funds obtained from his family. Probation opposed the motion and noted that it had not received evidence of the $20,000 payment.[5] The judge denied Collins's request on grounds that he "reports current income of over $127,000 per year. The court recognizes that [Collins's] health problems and his discipline have impacted his earning ability. Nevertheless, [Collins] was given a prior extension of time to pay and his current earnings are substantial." Collins filed a petition for interlocutory review of the order in the Review Department, which we denied, finding no abuse of discretion or error of law.

Third, on May 2, 2013, Collins filed a motion and sought to reduce the restitution amount. He revived his earlier arguments and also complained that at the time he stipulated to discipline, "there [was] no evidence or finding that the restitution payment schedule was consistent with (his) ability to pay," and argued the State Bar should have been required to do a review of his financial condition as of September 20, 2010. He said he was not provided with a calculation of the actual amount he would owe including interest (upwards of $450,000). He said this partially caused his failure to pay restitution: "[T]he failure of the State Bar to consider

[5] On April 12, 2013, Probation received evidence that Collins paid the additional $20,000 in restitution.

Respondent's Financial condition as of September 2010, the setting of the restitution payment schedule without consideration of or any examination of Respondent's ability to pay as contemplated and comprehended by the Stipulated Disposition was a substantial factor which has resulted in respondent's inability to pay restitution." Probation opposed the motion. On May 24, 2013, the judge denied the motion on grounds that Collins had failed to show changed circumstances and had made "comparatively minimal restitution payments despite earning substantial income." Collins filed a petition for interlocutory review of the order in the Review Department, which we denied, finding no abuse of discretion or error of law. Probation moved to revoke Collins's probation soon thereafter.

2. Collins Willfully Failed to Comply with his Promise to Pay Restitution

Under the terms of the stipulated discipline, Collins agreed to pay $258,000 plus interest by January 11, 2014 or reach a settlement with the Tenorio brothers. Collins had done *neither* by the date the hearing judge issued the order revoking probation. When Probation moved to revoke his probation, Collins had paid a total of $22,500 and had not reached a settlement with the Tenorio brothers. After considering Collins's ability to pay and his reasons for failing to pay, the hearing judge properly concluded that the failure to pay restitution as of August 2013 constituted a probation violation.

Collins argues unsuccessfully that the judge erred by not requiring Probation to show by a preponderance of the evidence that he had the ability to pay restitution. His reliance on *In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. 525 is misplaced. In *Potack*, we did not find that the State Bar was required to prove Potack's ability to pay restitution. Instead, we concluded that considerations of due process and fundamental fairness required that we examine "whether the probationer was able to make restitution and whether the probationer made sufficient good faith efforts to acquire the resources to pay." (*Id.* at p. 537.) Moreover, though

we found Potack was unable to pay restitution, we found him culpable for violating his probation because he failed to make sufficient good faith efforts to acquire the resources to pay and because he failed to seek an extension of time to allow him to pay. (*Id*. at pp. 537-538.)

Here, the hearing judge properly undertook the *Potack* inquiry both in his consideration of the modification requests and in ruling on the motion to revoke probation.[6] The judge reasonably provided Collins with additional time to pay the first $100,000 in restitution but otherwise held Collins to his agreement because Collins failed to show he lacked the ability to pay and failed to show he had made sufficient efforts to acquire the resources necessary to pay restitution. Collins filed petitions for interlocutory review of these orders in the Review Department, which were denied. Nevertheless, Collins continued to fail to pay restitution. When Probation moved to revoke his probation, he merely responded with a reformulation of his earlier unsuccessful arguments—submitting the same financial declaration he had submitted in support of his second motion.

We agree with the hearing judge that just as the motions were insufficient to modify the terms of his probation, Collins's arguments in the probation revocation proceeding are not a defense to the charge that he willfully violated his duty to pay restitution. Whatever Collins's financial circumstances and hardships, minimally this court demands that a respondent show that he has paid what he is able to pay by making consistent payments and by undertaking sufficient efforts to generate resources to pay restitution. Collins fell well short. Two years after the imposition of discipline and as of the first deadline to pay $100,000 (February 10, 2013), Collins

[6] Contrary to Collins's argument, the hearing judge's review of the evidence regarding Collins's ability and efforts to pay restitution is consistent with *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, where an attorney who showed he had no source of income was found not to have acted willfully in failing to pay restitution. In this matter, Collins did not show he had no source of income.

had only paid $2,500 or 2.5% of what he had agreed to pay by that date. His later $20,000 payment was simply too little too late to avoid culpability. (*In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 536-537; *In the Matter of Broderick*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 148.) Further, in support of his third motion to modify probation, he argued that he had never had the wherewithal to make restitution in the first place.

Collins collected over a quarter of a million dollars in unconscionable fees from the Tenorio brothers and charged them almost another quarter of a million dollars in unwarranted fees. For this misconduct, he bargained for a 90-day actual suspension—significantly less suspension than called for by the standards. In exchange, he promised to make his clients whole and demonstrate his rehabilitation by paying restitution on a schedule he voluntarily agreed to. Collins's failure to adhere to his agreement amounts to a serious violation of a probation condition that was essential to his discipline. (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044 [Supreme Court described restitution as "a necessary condition of probation designed to effectuate . . . rehabilitation and to protect the public from similar future misconduct"]; *In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 537 ["restitution serves the state's interest in rehabilitating . . . attorneys and protecting the public"].)

C. Collins Subsequently Settled with the Tenorio Brothers

February 11, 2014 marked the end of the three-year probationary period in the underlying matter. Sometime before that period elapsed, but after the hearing judge recommended revoking probation, Collins began to meaningfully work towards settling with the Tenorio brothers. Finally, in November 2015, Collins and the Tenorio brothers entered into the Settlement Agreement. Based on our review of the Settlement Agreement and the parties' concessions at oral argument, we find that the Tenorio brothers have released Collins from the obligation to pay any further restitution the bankruptcy found due in exchange for the payment of

$20,000 (in addition to the $22,500 he has previously paid). We further find that Collins has since paid the Tenorio brothers the $20,000 contemplated in the Settlement Agreement, and we consider that payment as the full amount of restitution owed. Our holding arises from the lack of a provision in the settlement clause of the stipulation that would have required either the making or completion of a settlement of Collins's restitution obligation be effected during his probationary period. Given the size of the restitution and that the allowed settlement could take any form, such as smaller installments and total payments over a period extending beyond the probationary period, the lack of a shorter time requirement to complete such a settlement was reasonable in this case and we give effect to it solely from the standpoint of calculating any further restitution due to the Tenorio brothers.

Contrary to Collins's claims at oral argument, however, the settlement does not change our *culpability* analysis. Though the stipulation did not set a specific time period for reaching settlement with the Tenorio brothers, we find that Collins was obligated to settle within the three-year probationary period to avoid violating the terms of his probation. (See *In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 536-537 ["substantial compliance" with probation condition is not defense to culpability].)

IV. MITIGATION AND AGGRAVATION

Standard 1.5 requires Probation to establish aggravating circumstances by clear and convincing evidence.[7] Standard 1.6 requires Collins to meet the same burden to prove mitigation.

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

A. Mitigation

The hearing judge found that Collins did not present any factors in mitigation. We find that Collins's financial difficulties, such as they are, warrant limited consideration in mitigation because they likely resulted in part from his cancer diagnosis, a circumstance not reasonably foreseeable or within his control. (*In re Naney* (1990) 51 Cal.3d 186, 196-197.) Collins, however, failed to present a complete picture of his financial condition as it was when he stipulated to discipline and afterwards. Further, his statements in his third motion to modify probation indicate that he may never have had enough income to pay the restitution he agreed to pay, which was clearly a foreseeable circumstance. So, too, is the fact that his public record of discipline would impact his ability to earn income.

We assign no mitigation to Collins's efforts to modify the terms of his probation.

B. Aggravation

The hearing judge correctly found that Collins's prior record of discipline, which underlies this probation revocation proceeding as set forth above, is an aggravating circumstance. (Std. 1.5(a) [prior record of discipline is aggravating circumstance].) Although every attorney found culpable of violating disciplinary probation will necessarily have a prior record of discipline, such a prior is considered in aggravation in revocation proceedings. (See, e.g., *In the Matter of Taggart, supra,* 4 Cal. State Bar Ct. Rptr. 302, 311; *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

V. DISCIPLINE

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 1.8(a) applies here and instructs that when there is a prior discipline, the degree of discipline imposed in the present proceeding "must be greater than the previously imposed sanction." Under rule 5.312, we may recommend the imposition of an actual

suspension equal to the period of stayed suspension imposed in the underlying proceeding. With these guidelines, we conclude that actual suspension is appropriate and should range from six months to one year.[8] (*In the Matter of Potack, supra,* 1 Cal. State Bar Ct. Rptr. at p. 540 [length of stayed suspension in prior matter to be considered when imposing discipline in revocation case].)

We disagree with the hearing judge that six months—the minimum period of actual suspension available—is sufficient to serve the purposes of attorney discipline.[9] The judge relied on *In the Matter of Taggart*, *supra*, 4 Cal. State Bar Ct. Rptr. 302 because Taggart failed to pay restitution and received a six-month actual suspension. We distinguish *Taggart* from the present case, however, because in *Taggart* we found a lack of a "substantial nexus between the restitution and the gravamen of the underlying misconduct." (*Id.* at p. 313.) A substantial nexus clearly exists here.

We find that *Potack* provides better guidance. In *Potack* and the present case, "restitution was a preeminent probationary duty." (*In the Matter of Potack*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 540.) And in both cases, the respondent stipulated to pay restitution on a specific schedule, but "having stipulated to complete it on schedule, . . . offered none of that restitution timely." (*Id.* at p. 541.) Unlike in this case, Potack failed to seek an extension of time to pay restitution. (*Id.* at p. 537.) However, we equate that failure to Collins's failure to pay any further restitution for two and a half years after his third modification request was denied. As in *Potack,* we conclude that such failures warrant a one-year actual suspension. (*Id.* at p. 541; see also *In the*

[8] Actual suspension is generally for a period of 30 days, 60 days, 90 days, six months, one year, 18 months, two years, three years, or until specific conditions are met. (Std. 1.2(c)(1).)

[9] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

Matter of Hunter (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81 [stayed one-year suspension set aside and respondent suspended for one year and until he provided proof of restitution].)

The hearing judge's recommendation that Collins's suspension continue until he pays restitution, however, is no longer warranted. The stipulation provided that if Collins and the Tenorio brothers reached a settlement, the amount paid pursuant to the settlement would "be considered the full amount of the restitution owed by respondent to the Tenorio brothers." Though untimely for the purposes of establishing a culpability defense, we consider the $20,000 paid to the Tenorio brothers under the Settlement Agreement to be the full amount of the restitution owed by respondent for the purposes of discipline. (Compare facts in the present case with *In the Matter of Taggart*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 313 [where no settlement provision was provided for in attorney's restitution obligation, attorney was required to pay restitution even though underlying indebtedness had been forgiven by aggrieved party].)

VI. RECOMMENDATION

We recommend that Mansfield Collins's probation be revoked and the previously ordered stay of suspension be lifted. We further recommend that Collins be actually suspended from the practice of law for one year.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We recommend that Collins be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

VIII. COSTS

We recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

IX. ORDER OF INACTIVE ENROLLMENT

The hearing judge did not expressly state his reasons for declining to order Collins placed on involuntary inactive enrollment under section 6007, subdivision (d)(1). (Rule 5.315.) Under the present circumstances, we find that involuntary inactive enrollment is warranted. The statutory criteria are met because Collins was under an order of stayed suspension with a period of probation and has been found to have violated probation. Further, involuntary inactive enrollment is appropriate because we are recommending a one-year period of actual suspension rather than the six months recommended by the hearing judge. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [involuntary inactive enrollment appropriate where period of recommended actual suspension will not expire before Supreme Court can review recommendation].) Further, given the serious nature of the probation violations and the lengthy pendency of this matter in the State Bar Court, public protection would be served by inactive enrollment. (*Ibid*.)

Therefore, we order that Collins be involuntarily enrolled as an inactive member of the State Bar effective three days after service of this opinion under section 6007, subdivision (d)(1). His inactive enrollment continues and will be terminated in the future in accordance with section 6007, subdivision (d)(2). Pursuant to section 6007, subdivision (d)(3), we also

recommend that Collins receive credit for the period of time he will be inactively enrolled pursuant to this order.

STOVITZ, J.*

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.

* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.