PUBLIC MATTER – DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **BENJAMIN THOMAS FIELD,** A Member of the State Bar.	)))))))	**05-O-00815; 06-O-12344 (Cons.)** **OPINION ON REVIEW**

I. INTRODUCTION

Benjamin Field, a career prosecutor for Santa Clara County, disregarded prosecutorial accountability in favor of winning cases. In doing so, he failed to fulfill his "important and solemn duty [as a prosecutor] to ensure that justice and fairness remain the touchstone of our criminal justice system." (*People v. Hill* (1998) 17 Cal.4th 800, 847.) Field committed misconduct that had a great impact on the legal system. He violated the due process rights of criminal defendants, and several courts criticized his performance as a deputy district attorney, ultimately imposing evidentiary sanctions for his conduct. As a result, the Office of the Chief Trial Counsel (State Bar) has charged Field with professional misconduct in four criminal cases over a ten-year period, alleging that he violated court orders and directives, performed incompetently, did not respect the court, failed to obey the law, withheld evidence, misled a judge and committed multiple acts involving moral turpitude, dishonesty or corruption.

The hearing judge found Field culpable of this misconduct, but also found the mitigation evidence to be so compelling that she recommended suspension rather than disbarment. Specifically, the hearing judge recommended that Field be actually suspended from the practice of law for a minimum of four years, subject to a five-year stayed suspension and a five-year

probation period. Also, the hearing judge imposed as a condition of reinstatement that Field must first prove rehabilitation from his misconduct, fitness to practice law and learning and ability in the general law. On review, Field urges that he is entitled to exoneration and requests that we reverse the hearing judge's decision in its entirety. At trial, the State Bar requested a three-year actual suspension but, on review, asks us to adopt the hearing judge's recommended discipline, including the four-year actual suspension.

Upon independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207) and after considering the standards,[1] the mitigation and aggravation, and the guiding case precedent, we agree with and adopt the hearing judge's recommended discipline. We find that Field's misconduct was inexcusable and we hold him accountable for unethical behavior in four criminal prosecutions. We conclude that the recommended discipline, particularly the four-year actual suspension, is necessary to protect the public and the courts, to preserve public confidence in the legal profession, and to maintain high professional standards for attorneys.

II. PROCEDURAL HISTORY

The State Bar filed two separate Notices of Disciplinary Charges (NDC), one in October 2007 (amended May 2008) and the other in June 2008. The first NDC alleged misconduct in three criminal matters (05-O-00815, 06-O-11153, and 06-O-12173), and the second NDC alleged misconduct in a fourth (06-O-12344). The hearing judge consolidated both NDCs for trial.

III. SUMMARY

Field was admitted to the practice of law in 1993. Shortly thereafter, he became a Deputy District Attorney for Santa Clara County, where he worked for over a decade as a prosecutor. The case before us alleges the following misconduct against Field:

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[1] Unless otherwise noted, all references to "standard(s)" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

(1) **The Minor A. Matter**. In 1995, Field obtained a dental examination of a minor accused of sexual assault in violation of a court order. As a result, the juvenile court judge suppressed the evidence from the examination;

(2) **The Auguste and Hendricks Matter**. In 2003, Field intentionally withheld a witness's statement that was favorable to the defense in a habeas corpus proceeding involving a sexual assault case. As a result, the superior court judge found that Field committed a discovery violation by concealing evidence;

(3) **The Ballard, Barrientos and Martinez Matter**. In 2003, Field intentionally withheld a defendant's statement favorable to co-defendants in a murder case. As a result, the superior court judge found that Field committed a discovery violation and dismissed a 25-year gun enhancement against one of the co-defendants; and

(4) **The Shazier Matter**. In 2005, Field made an improper closing argument in a sexually violent predator (SVP) case. As a result, the appellate court reversed the judgment committing the defendant as an SVP, describing Field's closing argument as "deceptive and reprehensible."

IV. STANDARD OF PROOF

The State Bar has the burden of proving misconduct by clear and convincing evidence. (Rules Proc. of State Bar, rule 213.) The function of a standard of proof is to instruct the fact-finder as to the required degree of confidence in the correctness of factual conclusions in a case. (*In re Winship* (1970) 397 U.S. 358, 370.) Evidence by a clear and convincing standard requires that the proof be "so clear as to leave no substantial doubt" and must be "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.) We independently review the record by this standard of proof.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. THE MINOR A. MATTER

In April 1995, 16 months after being admitted to the bar, Field prosecuted Minor A. for sexual assault. Although Minor A. said he was 13 years old, Field sought to prove that he was at least 16 years old in order to prosecute him as an adult. Welfare and Institutions Code section 608 provides that when a minor's age is at issue, the court may order a dental examination of his third mandibular molar if it finds that a scientific or medical test would assist in determining the minor's age. Field and his supervisor discussed how to obtain that examination of Minor A. The supervisor did not believe a court order was required, but Field decided to request one.

At a hearing before Judge Pro Tem Al Fabris on April 18, 1995, Field orally requested an order for the dental examination. Judge Fabris denied the request without prejudice. He ordered:

> "Determination is whether minor is 13 or 16 years old. D.A. requests 3d molar mandibular test. Denied. D.A. may file papers in that regard. Original birth certificate proffered by mother."

Judge Fabris told Field to file and serve a motion for the test to allow the defense an opportunity to respond, and he scheduled a pretrial conference regarding the "molar test" for April 27, 1995.

A few days before the pretrial conference, on April 24, 1995, Field met in chambers with Socrates Manoukian, the judge assigned to the case, and Minor A.'s counsel. Again, he orally requested the dental examination. Judge Manoukian testified that he told Field "if he wanted to have the test done, that he should make a motion . . . ," as Judge Fabris had ordered.

Yet, shortly thereafter, Field instructed the probation department to have the dental examination performed on Minor A. without filing a motion or obtaining a court order as he had been directed to do. The result disclosed that Minor A. was between 16 and 19 years old.

Judge Raymond Davilla presided over the April 27, 1995 pretrial conference. Field moved to amend the petition to state that Minor A. was 16 years old, informing Minor A.'s counsel and Judge Davilla that the dental test had been completed. Minor A.'s counsel opposed the motion because the test was done without a court order. Judge Davilla did not rule on any of the issues and continued the hearing to May 1, 1995, before Judge Manoukian. At that hearing, Judge Manoukian denied Field's request to amend the petition as to Minor A.'s age because Field failed to obtain the dental test in the manner that Judge Fabris had ordered. Judge Manoukian set the case for jurisdictional hearing (trial) and informed Field that he could raise the minor's age as an issue at that time.

At the jurisdictional hearing on May 4, 1995, Judge Manoukian expressed his displeasure with Field for obtaining the dental examination without the court's order. He stated that a "lawful order" required Field to file papers requesting the test, and yet Field had obtained it "without a colorable reason for doing so." Field insisted that Judge Manoukian told him during their in-chambers meeting on April 24, 1995, that he "would be within [his] rights in getting the test done." However, Judge Manoukian corrected him, stating that he told Field that he was within his rights to conduct the dental examination "[i]f [Field] filed the motion." Judge Manoukian found that Field illegally obtained the test results and ordered them suppressed.

Count Fifteen[2] (Failure to Obey Court Order, Bus. & Prof. Code, § 6103[3])

Section 6103 provides for suspension or disbarment if an attorney willfully disobeys or violates a court order. The State Bar alleged that Field willfully disobeyed Judge Fabris' April 18, 1995 order. The hearing judge found Field culpable, and we agree. Judge Fabris'

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[2]Because we present the four criminal matters in chronological order rather than the order in which the State Bar charged them, the numbers assigned to the counts of misconduct do not appear sequentially.

[3]Unless otherwise noted, all references to "sections(s)" are to this source.

written order, later clarified by Judge Manoukian, required Field to file a noticed motion to obtain a court order for the test. Yet he failed to do so and proceeded with the dental examination of Minor A.

Field argues that Judge Fabris' order was not mandatory but "permissive" because it stated that the "DA may file papers." This argument lacks merit. The reasonable interpretation of Judge Fabris' order is that Field's oral request for the dental test had been denied, and the test would not be allowed *unless* the court ordered it and only *after* the parties filed supporting and opposing papers. We find that Field's willful failure to obey Judge Fabris' order is a violation of section 6103.[4]

B. THE AUGUSTE AND HENDRICKS MATTER

In June 2001, Damon Auguste and Kamani Hendricks both filed a petition for writ of habeas corpus after unsuccessfully appealing their 1998 convictions for sexually assaulting a 15-year-old girl named Monique. They claimed, among other things, that Monique had falsely accused them. In support of this claim, they provided a declaration by Stephen Smith stating that Monique admitted to him that she made up the sexual assault allegations to avoid punishment for missing curfew. Field had originally prosecuted both men and was assigned to their habeas corpus proceedings before Judge James Emerson.

1. Witness Stephen Smith's Location and Interview

Judge Emerson ordered an evidentiary hearing on the habeas corpus petitions and the parties commenced discovery. Because Smith could not be found, Field obtained a search

[4]The State Bar alleged that by failing to obtain a court order for the dental examination, Field is also culpable of the misconduct alleged in Count Sixteen (Failure to Comply with Laws [in Welfare and Institutions Code section 608] (§ 6068, subd. (a)) and Count Seventeen (Failure to Maintain Respect to the Court (§ 6068, subd. (b)). The same facts supporting our culpability finding in Count Fifteen also form the basis for these violations. In *Bates v. State Bar* (1999) 51 Cal.3d 1056, 1060, the Supreme Court has instructed that little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings. We therefore dismiss Counts Sixteen and Seventeen with prejudice as duplicative allegations.

warrant for the telephone records of Smith's girlfriend, which enabled Field's investigator to locate him. On March 2, 2003, the investigator tape-recorded an interview with Smith, who confirmed that Monique told him she had made up the sexual assault charges against Auguste and Hendricks. Smith also provided even more exculpatory details than were included in his declaration.

In April 2003, Auguste's attorney requested that Field disclose all witness reports and interviews, including Smith's. In June 2003, having received no response from Field, Auguste's attorney repeated the request. About a month later, Auguste's attorney filed a status conference statement requesting Field's witness list, witness statements or summaries of the witnesses' anticipated testimony, and any reports of witness interviews.

Field did not disclose Smith's location or interview. Instead, he prepared a status conference statement and requested that his investigator prepare a supporting declaration. However, Field directed the investigator by e-mail not to reveal Smith's location or interview in that declaration, stating: "I don't want you to include anything about your attempts to locate him [Smith] except that you found out he is no longer with the Army and that he hasn't been for a long time." The declaration was misleading because it omitted the fact that the investigator had located and interviewed Smith and instead included him in the "summary . . . of unsuccessful attempts to locate" witnesses at the addresses provided by the defense. Field filed with the court both the misleading declaration by his investigator and his own status conference statement, which stated in part:

> "Stephen Smith . . . appears to be the only witness whose testimony, if believed, would impeach the victim's testimony. However, Petitioner Auguste's witness list provides an address from which Smith moved approximately two years ago. Assuming Petitioners do not know Smith's whereabouts and cannot secure his appearance as a witness, there will be little if anything to rebut."

During an in-chambers status conference on July 18, 2003, Auguste's attorney asked the court to continue the habeas corpus hearing because he had lost contact with Smith. Instead of disclosing Smith's whereabouts and interview, Field kept this information to himself and emphatically urged the court to proceed. Ultimately, the court continued the hearing since the necessary witnesses, including Smith, had not been found.

On July 28, 2003, a defense investigator located Smith, who revealed that Field's investigator had tape-recorded an interview with him five months earlier. Upon learning this, Auguste's attorney filed a motion to suppress evidence and for sanctions based on prosecutorial misconduct. Only then did Field provide Smith's interview and location. At the hearing on the motion, Judge Emerson concluded that Field had committed a discovery violation and ordered certain evidence suppressed. Judge Emerson denied the request for sanctions, however, because no irremediable prejudice had been shown.

At the State Bar proceedings, Field testified about why he withheld Smith's location and interview. First, he explained that he did not believe he had a legal duty to provide discovery in a habeas corpus proceeding. And second, he felt the defense had not been forthcoming with discovery and therefore concluded: "if they were going to hold back . . . I was entitled to do the same."

Count Six (Failure to Comply with Laws, § 6068, subd. (a))

Under section 6068, subdivision (a), it is a duty of an attorney "to support the Constitution and laws of the United States and of this state." The State Bar alleged that Field failed to comply with the law when he did not voluntarily disclose Smith's location and interview in violation of his constitutional duty under *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215] (prosecutor has constitutional duty to disclose evidence favorable to defense before trial). Field contends *Brady* does not apply in post-conviction proceedings such

as habeas corpus. (*District Attorney's Office for the Third Judicial District, et al. v. Osborne* (2009) 557 U.S. ___, 129 S.Ct. 2308, 174 L.Ed.2d 38.) For purposes of analyzing Field's culpability in this count, we do not decide whether the *Brady* rule applies because we find Field culpable for a statutory violation in Count Seven, below, based on the same facts – that Field intentionally withheld Smith's statement. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 671 [principles of judicial restraint require court to avoid deciding case on constitutional grounds unless absolutely necessary and non-constitutional grounds must be relied on if available].) We therefore dismiss Count Six with prejudice as duplicative of Count Seven.

Count Seven (Moral Turpitude – Suppression of Evidence, § 6106)

Under section 6106, "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice . . . ." (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.) The State Bar charged that Field is culpable under this section because he intentionally suppressed Smith's interview and location in violation of his legal duty to disclose them. Although our courts consistently impose a post-conviction duty on prosecutors to disclose all material evidence favorable to the defendant, they have not uniformly described the source of this duty. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1261 [after conviction, prosecutor is bound by ethics of his office to disclose information materially favorable to defense]; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179-1182 [prosecution's failure to disclose exculpatory evidence during post-conviction appeal is constitutional due process violation under *Brady*].) Independent of the application of the *Brady* rule, prosecutors have a duty under California and federal law to disclose exculpatory materials after trial, including in habeas corpus proceedings. (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25 [96 S.Ct. 984, 993, 47 L.Ed.2d 128, 141,];

In re Lawley (2008) 42 Cal.4th 1231, 1246; *People v. Gonzalez, supra,* 51 Cal.3d at p. 1261.) And the State Bar's ethical rules of conduct also prohibit withholding evidence that prosecutors have a legal obligation to produce. (Rules Prof. Conduct, rule 5-220 [suppression of evidence]); see *Merrill v. Superior Court* (1994) 27 Cal.App.4th 1586, 1595.) Without question, a prosecutor is duty-bound – even after conviction – "to inform the appropriate authority of . . . information that casts doubt upon the correctness of the conviction. [Citations.]" (*In re Lawley, supra,* 42 Cal.4th at p. 1246.) Furthermore, it is expected that prosecutors with such information will disclose it promptly and fully (*People v. Gonzales*, *supra*, 51 Cal.3d at p. 1261), and regularly. (*In re Steele* (2004) 32 Cal.4th 683, 694.)

The interview of Smith by Field's investigator was clearly favorable to Auguste and Hendricks because it directly impeached Monique's trial testimony and cast doubt upon the validity of their convictions. Field had a duty to promptly and fully disclose Smith's statements as well as his whereabouts. By intentionally concealing that material evidence, Field committed an act of moral turpitude and dishonesty. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes creating false impression by concealment as well as by affirmative misrepresentations].)

We note that Field's misconduct is particularly disturbing because it escalated over time. First, he instructed his investigator to prepare a misleading declaration and then knowingly filed it with the court and served it on opposing counsel. Second, Field filed a status conference statement falsely implying he did not know Smith's whereabouts. Third, he waited nearly five months before disclosing Smith's interview and location, and did so only after Auguste's attorney learned of it and filed a motion alleging prosecutorial misconduct. Fourth, and most significantly, Field sought to take advantage of his deception by urging the court to proceed to the habeas corpus hearing without Smith. We conclude that Field's actions constitute a

calculated scheme to hide evidence favorable to the defense, and we adopt the hearing judge's finding that he "intentionally withheld Smith's whereabouts in an attempt to prevent Auguste and Hendricks from locating Smith."

Field argues that *his* due process rights were violated because the NDC characterized his post-conviction disclosure duty as legal rather than ethical, thereby denying him sufficient opportunity to defend against the charges. We find this characterization did not deny him sufficient opportunity to defend.[5]

2. The Search Warrants

Field obtained five California search warrants from judges other than Judge Emerson to gather evidence in connection with the habeas corpus proceedings. Field reviewed his investigator's search warrant affidavits and worked closely with him in preparing them. Each affidavit recited that it sought evidence in a pending habeas corpus proceeding involving 1998 crimes.

At the July 18, 2003 status conference, Auguste's attorney objected to Field using search warrants for discovery in a habeas corpus proceeding because it was a civil matter. Judge Emerson also questioned the use of search warrants in such proceedings. He cautioned Field to meet only with him for any additional search warrants. When Field asked what to do if he needed one in an emergency, Judge Emerson testified, "I looked him right in the eye, and I said, 'Ben, just don't do it.'" Field testified that he agreed to notify Judge Emerson about "any

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[5]In Count Eight, the State Bar alleged Field suppressed evidence (rule 5-220) by not voluntarily disclosing Smith's location and interview. In Count Eleven, the State Bar alleged Field failed to maintain respect due to the courts (§ 6068, subd. (b)) by not disclosing the information about Smith when the court was considering whether to continue the evidentiary hearing. The same facts that support the culpability finding in Count Seven also form the basis for these violations. We therefore dismiss Counts Eight and Eleven with prejudice as duplicative allegations.

further law enforcement efforts to obtain a warrant." Judge Emerson did not issue a written order because he trusted Field to comply with his verbal directive.

On July 22, 2003, only four days after this discussion, Field obtained an additional search warrant from a Colorado judge without notifying Judge Emerson. Field and his investigator prepared the original draft of the investigator's affidavit for the Colorado search warrant. The affidavit was substantially similar to the five used in California. The investigator then e-mailed his affidavit to a Colorado deputy sheriff to process in Colorado, authorizing him to make changes. However, before submitting the document to the Colorado judge, the deputy sheriff replaced Field's investigator's affidavit with his own, which was substantially different and eliminated many important facts. Field did not know about the substituted affidavit until after the search warrant was served.

Count Two[6] (Failure to Perform with Competence, Rules Prof. Conduct, rule 3-110(A)[7])

Under rule 3-110(A), "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The State Bar alleged that Field is culpable because he permitted his investigator to submit false and misleading affidavits to obtain the California search warrants, and he failed to properly oversee the execution of the Colorado warrant. We adopt the hearing judge's finding that while the California affidavits were "sloppy," they were not misleading since it was clear they were sought in a habeas corpus proceeding related to 1998 crimes. As to Field's involvement in the Colorado warrant, we do not adopt the hearing judge's finding that Field performed incompetently. The record reveals that he did not know the Colorado deputy had substituted his own deficient affidavit for the one Field and his investigator

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[6]The State Bar alleged only "General Allegations" in Count 1 of the first NDC; no specific violation is charged.

[7]Unless otherwise noted, all further references to "rule(s)" are to this source.

had prepared until after the search warrant was executed. Therefore, we do not find Field culpable for a violation of rule 3-110(A) and dismiss Count Two with prejudice.

Count Three (Moral Turpitude – Misrepresentations, § 6106)

The State Bar charged that Field committed an act of moral turpitude, dishonesty or corruption when he permitted his investigator to obtain the California and Colorado search warrants based on false and misleading affidavits. As discussed above, we find that the California affidavits were not misleading and we do not hold Field responsible for the deficient affidavit submitted by the deputy sheriff in Colorado. This count is dismissed with prejudice for lack of evidence.

Count Five (Moral Turpitude – Disrespect for Court, § 6106)

The State Bar alleged that Field committed an act involving moral turpitude, dishonesty or corruption because he represented to Judge Emerson that he would exclusively seek authorization from him for any future search warrants, and then failed to do so. Judge Emerson's directive to Field was clear when he looked at him and emphatically stated: "Ben, just don't do it." We consider Field's violation of this explicit instruction to be an act of disrespect to the court. In addition, Field admitted at trial that he agreed to contact Judge Emerson for future search warrants. Yet, only four days later, he obtained the Colorado warrant without notifying Judge Emerson which, given the circumstances, is disrespectful conduct toward the court. We find that Field, as an officer of the court, intentionally did not keep his promise to Judge Emerson, and is culpable of an act of moral turpitude and dishonesty.[8]

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[8]In Count Four, the State Bar alleged that Field failed to maintain respect to the court (§ 6068, subd. (b)) when he violated Judge Emerson's instruction. These facts also support our culpability finding in Count Five. Therefore, we dismiss Count Four with prejudice as a duplicative allegation.

Count Nine (Moral Turpitude – Misrepresentations, § 6106)

The State Bar charged that Field committed an act of moral turpitude, dishonesty or corruption by making misrepresentations to and concealing material information from the court about Smith and about the execution of three California search warrants. The hearing judge found him culpable. We agree that Field is culpable for concealing material information and making misrepresentations about Smith, but this finding is duplicative because it is based on the same facts that support culpability in Count Seven.

Further, we do not agree with the hearing judge that Field's failure to disclose to the court three California search warrants involving Smith constituted moral turpitude. Those search warrants were executed before Judge Emerson issued his oral instruction to notify him about any future search warrants. Without more, Field's failure to disclose those warrants does not support a finding of moral turpitude, dishonesty or corruption. We therefore dismiss Count Nine with prejudice for lack of evidence and as duplicative of Count Seven.[9]

C. THE BALLARD, BARRIENTOS AND MARTINEZ MATTER

In November 2002, Field was assigned to prosecute Bernard Ballard, Jaime Barrientos and Alfred Martinez for a home invasion robbery-murder of a methamphetamine dealer. The intruders wore masks during the crime, and one of them shot and killed the dealer. After arrest, each confessed involvement, but accused one another of doing the actual shooting. Specifically, Ballard identified Martinez as the shooter. Two witnesses, Angel Farfan and Crystle Lucchesi, were present at the dealer's apartment at the time of the murder. Lucchesi did not see the shooting, and Farfan implied that an "African-American" was the shooter. Ballard is African-American and Martinez and Barrientos are Latinos.

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[9]In Count Ten, the State Bar alleged Field sought to mislead a judge (§ 6068, subd. (d)), based on the same facts alleged in Count Nine. For the reasons stated for our dismissal of Count Nine, we also dismiss Count Ten with prejudice.

In January 2003, Martinez's counsel told Field that his client wanted to talk to law enforcement in the hope of currying favor with the prosecution to receive a lighter sentence. Martinez's attorney and Field entered into a written agreement to interview Martinez on the condition that the interview statement would not be used at trial by either party without further mutual agreement. On February 11, 2003, two police detectives interviewed Martinez at the jail in the presence of Martinez's attorney and Field. Martinez implicated witness Farfan as an accomplice whose role in the crime was to confirm that the dealer was home with the drugs and money when the robbers arrived. Martinez also revealed that witness Lucchesi was pregnant with his child, and that she removed drugs and money from the dealer's apartment after the murder.

At the joint preliminary hearing, Martinez entered into a plea agreement for a sentence of 35-years-to-life, and Field stipulated that Martinez was not the shooter. Field did not disclose the Martinez jail interview to Ballard or Barrientos, and the court proceeded with the preliminary hearing on the murder charges pending against them.

Field called as witnesses Lucchesi, Farfan, a detective who interviewed Martinez, and Ballard's roommate. He asked each of them carefully-crafted questions that did not reveal the Martinez jail interview. Farfan and Lucchesi testified they were shocked by the sudden arrival of the robbers and could not identify them. Only Farfan provided details about the shooter's identity when he implied that it was Ballard because the man who was armed with a gun and standing next to the dealer when he was shot was African-American. After the preliminary hearing, based on Farfan's testimony, Field charged Ballard as the shooter by adding an enhancement of 25-years-to-life for discharging a firearm, causing great bodily injury or death.

On May 19, 2003, the court set the trial for Ballard and Barrientos for July 7, 2003. Still not disclosing the Martinez interview, Field filed a request with the court to transfer Martinez from San Quentin to the county jail, stating that he intended to call him as a trial witness. On July 7, 2003, the court continued the trial to August 18, 2003.

A week before the August trial date, Ballard's counsel learned that Martinez was upset about being brought to the county jail, and went to visit him. Martinez complained that he should not have to testify since he already gave his statement to police detectives who interviewed him in jail six months earlier with Field and his attorney present. Ballard's counsel was surprised to discover this and immediately confronted Field, who then produced the tape of Martinez's jail interview.

Ballard and Barrientos moved to dismiss the case because Field had not timely revealed the Martinez interview. The trial court concluded Field should have produced it as exculpatory evidence because it discredited witness Farfan's identification of Ballard as the shooter. As a result, the court dismissed the 25-year gun enhancement against Ballard, calling Field's failure to disclose the interview a "blatant" discovery violation.

Count Twelve (Failure to Comply with Laws, § 6068, subd. (a))

The State Bar alleged that Field's failure to disclose the Martinez jail interview violated section 6068, subdivision (a), on two grounds: (1) that he did not comply with his constitutional duty under *Brady v. Maryland, supra,* 373 U.S. 83; and (2) that he did not fulfill his statutory discovery obligations under California Penal Code sections 1054.1, subdivisions (b), (e), and (f) and 1054.7.

We first look to Field's statutory discovery obligations. Penal Code sections 1054.1(b), (e) and (f), respectively, require the prosecutor to disclose statements of defendants, exculpatory

evidence and statements of witnesses.[10] Penal Code section 1054.7 requires the disclosures to be made at least 30 days before trial unless good cause is shown why they should be denied, restricted or deferred. Field was obligated to timely produce Martinez's jail interview statement because he was both a defendant and a trial witness. Field did not fulfill this obligation. We conclude that he is culpable under this count because he violated Penal Code sections 1054.1(b) (defendant statement) and (f) (witness statement), and 1054.7 (30-day discovery cutoff) since he failed to disclose the interview at least 30 days prior to the July 7, 2003 or August 18, 2003 trial dates, and made no showing of good cause for any delay.

We reject Field's argument that he thought the 30-day discovery cutoff for the first trial was postponed because the trial had been continued. He explained that the trial date set by the court was not real, and an attorney must use a "predictive ability" based upon "on-the-job training" to determine when a case is actually going to trial for the purpose of timely producing discovery. Field's position is untenable. Absent express language in section 1054.7 dictating otherwise, we do not presume the Legislature intended to allow parties in criminal proceedings to disregard discovery deadlines associated with trial dates merely because they think they can successfully predict that a trial date will be continued. (See *Sandeffer v. Superior Court* (1993) 18 Cal.App.4th 672, 678 [under Penal Code § 1054.7, disclosure may properly be compelled on date even before 30 days preceding "the date set for trial"].) Moreover, Field's argument is disingenuous because the superior court did not postpone the discovery cutoff date for either trial and did not grant a continuance for the first trial until the actual trial date of July 7, 2003. And

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[10]Penal Code section 1054.1 is designed to promote truth in trials by requiring timely pretrial discovery and provides in pertinent part: "The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies: [¶] . . . [¶] (b) Statements of all defendants. [¶] . . . [¶] (e) Any exculpatory evidence. [¶] (f) Relevant written or recorded statements of witnesses . . . whom the prosecutor intends to call at the trial . . . ."

even after the court set the new August 18, 2003 trial date, Field did not produce the Martinez interview until August 16, 2003, just two days before the second trial date and only after it had been discovered by defense counsel.

The State Bar asserts an additional ground of culpability – that Penal Code section 1054.1, subdivision (e), required Field to disclose the Martinez interview as exculpatory evidence because it impeached the credibility of witnesses. We do not decide whether Field violated subdivision (e) (exculpatory evidence) because his violations of Penal Code sections 1054.1, subdivisions (b) and (f) are sufficient to establish culpability for failing to obey the law, as charged in this count. Likewise, we do not decide whether Field violated his *constitutional* duty to disclose evidence under *Brady* since we have concluded that he is culpable for violating his statutory discovery obligations.

Count Thirteen (Moral Turpitude – Suppression of Evidence, § 6106)

The State Bar alleged that Field committed an act involving moral turpitude, dishonesty or corruption when he intentionally suppressed Martinez's statement. We agree. Even though Field eventually disclosed it before trial, he intended from the start to withhold the interview statement since he entered into the written agreement with Martinez and his attorney not to reveal it without further mutual agreement. And Field tailored his witness examination during the preliminary hearing to avoid disclosing its existence. Moreover, Field waited nearly six months before producing Martinez's statement, and did so only after the attorney for Ballard discovered it and confronted him. Under these circumstances, we find that Field's failure to voluntarily disclose the Martinez jail interview was intentional, dishonest and involved moral turpitude.[11]

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[11]In Count Fourteen, the State Bar alleged that by failing to voluntarily disclose the Martinez interview, Field is also culpable of suppressing evidence (rule 5-220). The same facts that support our culpability findings in Counts Twelve and Thirteen also support Count Fourteen. We therefore dismiss Count Fourteen with prejudice as a duplicative allegation.

D. THE SHAZIER MATTER

In 1994, Dariel Shazier pled guilty to multiple sex crimes and was sentenced to state prison. In April 2003, the Santa Clara County District Attorney sought to prevent Shazier's release from custody by filing a petition to commit him as an SVP to a state mental hospital for a two-year period.[12] The case was assigned to Field.

The SVP jury trial was held in 2004. Shazier's counsel made a motion in limine to prohibit witnesses from telling jurors that Shazier would go to a hospital rather than prison if he were found to be an SVP. The court granted the motion.

Nonetheless, Field elicited witness testimony that violated the order. One of Field's witnesses stated that SVPs are sent to Atascadero State Mental Hospital for treatment and are re-evaluated every two years. Shazier's counsel objected, and the court struck the testimony and directed Field not to mention it in final argument. Field apologized, admitting that he should have framed his question more narrowly and had failed to advise his witness about the in limine order. The trial resulted in a hung jury, and Shazier remained in Atascadero pending a new hearing.

At the second SVP trial in 2005, the court re-adopted the in limine order from the first hearing. Field testified that he knew the order also applied to him. Yet, in his rebuttal closing

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[12]An SVP is a person who receives a determinate sentence after being convicted of a sexually violent offense against two or more victims, and has a diagnosed mental disorder that makes that person a danger to the health and safety of others because of a likelihood to commit further sexually violent crimes. (Welf. & Inst. Code, § 6600, subd. (a).)

argument, he commented to the jury about Shazier's placement at Atascadero if found to be an SVP:

> "...The defense has had some testimony about how difficult a place Atascadero State Hospital is. It's a stressful environment, that sort of thing. And that testimony is intended at least in part to make you think sympathetically toward the [defendant]. [¶] [*Y*]*ou should not make a decision based on what you think it's going to be like for the [defendant] in Atascadero State Hospital.* That's not for you." [Italics added.]

Shazier's counsel objected and moved for a mistrial on the ground that Field violated the court's in limine order. Field explained that he only intended to dispel sympathy for Shazier that he thought had been created when two psychology technicians from Atascadero described the facility as a high-stress environment where violent outbreaks often occurred. The court denied the motion for mistrial but warned Field that his comments in closing argument were on "dangerous ground" and he should not make them again in any SVP case. The jury found that Shazier was an SVP, and the court committed him for two years.

Shazier appealed, claiming that Field had engaged in prosecutorial misconduct during the closing argument. The Court of Appeal agreed and reversed the judgment, finding that Field "violated not only the court's in limine order prohibiting reference to the consequences of a true finding, but also the proscription against such comments set forth in *Rains* [*People v. Rains* (1999) 75 Cal.App.4th 1165, 1169]." The appellate court called Field's comments "... deceptive and reprehensible in addition to being in direct contravention of the trial court's orders." The court also observed that Field's comments were designed to inform the jury that Shazier was merely going to the hospital for treatment if found to be an SVP and were made at the end of Field's rebuttal argument where they would be fresh in the jurors' minds as they entered deliberations.[13]

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[13]On August 30, 2006, the California Supreme Court granted a petition for review in *Shazier*, but dismissed it on May 14, 2008, in light of its decision in *People v. Lopez* (2008) 42 Cal.4th 960.

Count One (Failure to Comply with Laws, § 6068, subd. (a))

The State Bar charged that Field violated California law under *People v. Rains, supra,* 75 Cal.App.4th 1165, by informing the jury during closing argument what would happen to Shazier if it found him to be an SVP. *Rains* established that a trier of fact may not receive evidence about the *consequences* of an SVP finding because it is irrelevant to proving the *criteria* for SVP. We find that the only reasonable inference to be derived from Field's argument to the jury is that Shazier would be sent to Atascadero State Hospital if found to be an SVP. We conclude, as did the appellate court, that Field's closing argument violated *Rains*.

On review, Field volunteers several explanations for his closing argument that he never offered at the time he made the comments. First, he denies that he violated *Rains* because the jury already knew from the trial testimony that Shazier would be housed at Atascadero if committed as an SVP. Second, Field reasons that Shazier's counsel "opened the door" for his argument by eliciting testimony from a psychologist about the percentage of people who were in Atascadero under an SVP commitment. Third, he contends that his comments were authorized by *People v. Grassini* (2003) 113 Cal.App.4th 765, which provides that when the defense claims that treatment can take place in an out-patient facility, the jury must be instructed that the prosecution has to prove that treatment in a secure facility is necessary to protect the public. And finally, Field argues that the in limine order changed over the course of the trial, permitting him to comment on the consequences of an SVP finding.

The record does not support any of Field's new assertions. Although the trial court in Shazier permitted certain testimony before the jury about housing SVPs at Atascadero, it did not change the in limine order or authorize Field to argue the *consequences* of an SVP finding. Nor did Field seek a ruling that trial developments had entitled him to make such an argument. We conclude that Field intended to, and in fact did, argue to the jury the custody consequences of an

SVP commitment for Shazier – in violation of *Rains*. The hearing judge correctly found Field culpable of violating the law under section 6068, subdivision (a).[14]

Count Three (Moral Turpitude – Improper Closing Argument, § 6106)

The State Bar alleged that Field committed an act of moral turpitude, dishonesty or corruption by intentionally arguing the consequences of an SVP finding in his closing argument in violation of both California law and the in limine order. The State Bar urges that the conduct was particularly deceptive due to its timing – at the end of the hearing as part of Field's rebuttal argument. Finding that Field lacked credibility, the hearing judge rejected his explanation that the argument was designed to dispel juror sympathy for Shazier. Given this credibility determination, we agree with and adopt the hearing judge's conclusion that Field is culpable of moral turpitude as charged.[15]

VI. FACTORS IN AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravating and mitigating circumstances. Field must establish mitigation by clear and convincing evidence (std. 1.2(e)), while the State Bar has the same burden to prove aggravating circumstances. (Std. 1.2(b).)

A. FACTORS IN AGGRAVATION

The hearing judge found two factors in aggravation and we agree. First, Field committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) Second, his misconduct harmed the

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[14]In the Shazier Matter (the second NDC), in Count Two, the State Bar alleged Field failed to obey a court order (§ 6103) when he violated the in limine order by telling the jury what would happen if Shazier were found to be an SVP. In Count Four, the State Bar alleged Field failed to perform with competence (rule 3-110(A)) when he made his closing argument in violation of California law and the in limine order. In Count Five, the State Bar alleged that Field failed to maintain respect to the court (§ 6068, subd. (b)) when he made his closing argument in violation of California law and the in limine order. The same facts that support our culpability finding in Count One also form the basis for these violations. We therefore dismiss Counts Two, Four and Five with prejudice as duplicative allegations.

[15]Having reviewed de novo all of the arguments set forth by Field in this case, any arguments not specifically addressed in this opinion have been considered and rejected.

administration of justice by depriving criminal defendants of valuable evidence to which they were entitled, causing court delays, creating unnecessary litigation and compromising serious criminal cases. (Std. 1.2(b)(iv).) The setting for Field's misconduct involved grave criminal offenses, with correspondingly serious punishments. In such cases, "[i]t is self evident that a lawyer's presentation to the court and counsel of deliberately fabricated . . . evidence strikes directly at the very integrity of the judicial process." (*Price v. State Bar* (1982) 30 Cal.3d 537, 551, dis. opn. of Richardson, J.) We find that Field's abuse of his prosecutorial power negatively impacts the reputation of the District Attorney's Office and the public's trust in the criminal justice system.

Like the hearing judge, we do not find that Field displayed indifference toward rectification. (Std. 1.2(b)(v).) Although he vigorously contests his culpability as charged, Field admitted at trial that he exercised poor judgment and viewed his discovery duties too narrowly by failing to disclose Smith's location and statement in the Auguste and Hendricks Matter, and by withholding the Martinez interview in the Ballard, Barrientos and Martinez Matter. Field also admitted at trial that he should have immediately produced the Martinez interview, concluding "there's no argument that I violated [Penal Code section] 1054." He testified that he would conduct discovery differently now and has made significant changes to his discovery procedures, including permitting an open-file policy. And in the Shazier Matter, it was Field who self-reported the finding of prosecutorial misconduct to the State Bar as soon as he learned of the appellate court's decision. On this record, we do not find that there is clear and convincing evidence that Field lacks recognition or understanding of his misconduct.

B. FACTORS IN MITIGATION

The hearing judge found three factors in mitigation: cooperation, good character and pro bono service. Overall, the hearing judge concluded that the mitigation was compelling. We agree.

First, Field cooperated with the State Bar by entering into a stipulation related to the four criminal cases at issue. Although the stipulated facts were not difficult to prove (compare *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906 [attorney afforded substantial mitigation for cooperation by stipulating to facts not easily provable]) and Field did not admit culpability, the stipulation was relevant and assisted the State Bar's prosecution of the case. We therefore assign limited mitigation for cooperation. (Std. 1.2(e)(v).)

Second, Field presented an extraordinary demonstration of good character. (Std. 1.2(e)(vi).) Like the hearing judge, we find that showing to be a very persuasive factor in mitigation. Field presented 36 character witnesses, including judges, attorneys, public officials, law enforcement personnel, community leaders, victims of crime, and friends. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"].) His witnesses had known Field between five to 30 years and uniformly attested to his honest character and extraordinary integrity. Their opinions remained unchanged despite knowledge of the charges against him.

We expressly note the testimony of several witnesses. George Kennedy, the District Attorney for Santa Clara County from 1990 to 2007, lauded Field's extraordinary professional skills and good character. Although he thinks Field failed to exercise sufficient care in his obligations to the defense, Kennedy also believes Field is a completely honest person and not intentionally corrupt. Retired Judge Ronald Lisk testified that he has never doubted Field's competency, character or honesty. Even after learning of the charges, his opinion of Field remained so high that he recommended him to the governor for appointment to the bench. Significantly, a senior public defender who has known Field for 15 years testified that he believed Field was a fair and honest man with integrity and compassion. And a defense attorney

working for the Alternate Defender's Office testified that he felt Field was honest and behaved impeccably as a prosecutor.

Third, Field offered an impressive record of participation in pro bono and community service activities. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service is mitigating factor entitled to considerable weight].) He has devoted much of his free time to valuable charitable work for disadvantaged youths, crime victims, and the hungry and homeless. And he actively participates in local community groups, including the Santa Clara Bar Association, Legislation for Public Interest, Silicon Valley Campaign for Legal Services and PACT (People Acting in/Community Together).

VII. LEVEL OF DISCIPLINE

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 legal profession and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Our analysis begins with the standards. While we recognize that they are not binding on us in every case, the Supreme Court has instructed that we should follow them "whenever possible" (*In re Young, supra,* 49 Cal.3d at p. 267, fn. 11), and they should be given great weight in order to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Guided by standard 1.6(a), we must consider the most severe discipline that applies to Field's misconduct. Because Field committed acts of moral turpitude and dishonesty, we apply standard 2.3, which provides for actual suspension or disbarment.

Given the broad range of discipline in standard 2.3, we look to comparable case law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311). We note that the California Supreme Court has not hesitated to impose disbarment on attorneys whose interference with the fair administration of justice resulted in their criminal convictions. (See *In re Hanley* (1975) 13 Cal.3d 448, 454 [defense attorney's conviction for bribing witness not to testify in murder case "impugned the integrity of the judicial system" justifying disbarment]; see *In re Allen* (1959) 52 Cal.2d 762, 768 [plaintiff attorney's conviction for soliciting witnesses to commit perjury in civil trial "inherently" called for disbarment].) However, these cases are not directly on point with Field's circumstances because the record does not reveal any criminal convictions for his misconduct. In fact, our research reveals very limited case precedent as to State Bar discipline for prosecutorial misconduct, with the guiding cases imposing discipline ranging from 30 days' to two years' actual suspension.

In *Noland v. State Bar* (1965) 63 Cal.2d 298, a prosecutor committed an act of moral turpitude by attempting to delete potential pro-defense jurors from the jury list to gain an advantage at trials. The Supreme Court imposed a 30-day actual suspension, finding that his misconduct was a "calculated thwarting of objective justice." (*Id.* at p. 303.)

In *Price v. State Bar, supra,* 30 Cal.3d 537, a prosecutor altered evidence presented at a murder trial in order to obtain a conviction. His misconduct involved moral turpitude, and was aggravated when the prosecutor visited the defendant in jail and offered to seek a favorable sentence if the defendant agreed not to appeal the conviction. The prosecutor in *Price* presented significant evidence in mitigation, including lack of a disciplinary record, cooperation, remorse, good character and community works. Although the misconduct was extremely serious, the Supreme Court concluded that the weight of the mitigation militated against disbarment and imposed a two-year actual suspension.

We agree with the hearing judge that Field's misconduct over the 10-year period warrants more severe discipline than that imposed in *Price.* Prosecutors must meet standards of candor and impartiality not demanded of other attorneys. They are held to this elevated standard of conduct because of their "unique function . . . in representing the interests, and in exercising the sovereign power, of the state. [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 820.) "The [prosecutor] is the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." (*Berger v. United States* (1935) 295 U.S. 78, 88.) Although our system of administering criminal justice is adversarial in nature, and prosecutors must be zealous advocates in prosecuting their cases, it cannot be at the cost of justice. (*United States v. Young* (1985) 470 U. S. 1, 7 [". . . while [the prosecutor] may strike hard blows, he is not at liberty to strike foul ones"].) The "ultimate goal [of the criminal justice system] is the ascertainment of the truth, and where furtherance of the adversary system comes in conflict with the ultimate goal, the adversary system must give way to reasonable restraints designed to further that goal." (*In re Ferguson* (1971) 5 Cal.3d 525, 532.)

We find that Field lost sight of this goal when he prosecuted the four criminal cases examined here. And in doing so, he disregarded the foundation from which any prosecutor's authority flows – "The first, best, and most effective shield against injustice for an individual accused . . . must be found . . . in the integrity of the prosecutor." (Corrigan, *Commentary on Prosecutorial Ethics* (1985) 13 Hastings Const. L.Q. 537.) Field's misconduct began shortly after his admission to the bar, involved moral turpitude, spanned a 10-year period and significantly affected the criminal justice system. A narrow reading of his discovery obligations, coupled with the desire to convict, blurred his understanding of a prosecutor's special duty to promote justice and seek the truth. Although we recognize that not every violation of the law regarding discovery and argument merits discipline, in the criminal cases before us Field was not

candid and truthful in his dealings with the superior court, counsel and the defendants. His intentional violation of the law deprived criminal defendants of important rights. We consider Field's misconduct related to the discovery violations to be the most serious. When prosecutors act dishonestly or unilaterally decide that evidence favorable to the defense should be withheld, the accused is endangered, the case is damaged and public confidence is lost.

In the final analysis, however, the determination of attorney disciplinary sanctions must turn on a consideration of all factors in the case. (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 796.) The hearing judge found compelling the un-rebutted mitigation testimony of 36 character witnesses. These findings must be given great weight "because the hearing judge heard and saw the witnesses and observed their demeanor. [Citations.]" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315; see also Rules Proc. of State Bar, rule 305(a); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.) Recognizing that the hearing judge is in the best position to assign the proper weight to this evidence, and upon our own reading of the record, we concur that the mitigation was compelling.

While Field's misconduct was serious, like the hearing judge, we do not recommend disbarment in view of his mitigation and the lesser discipline imposed in similar cases. Rather, after balancing all of the relevant circumstances, we believe that the goals of attorney discipline and prosecutorial accountability will be met by recommending a four-year actual suspension, which is basically the longest period to recommend short of disbarment.[16] We also recommend that Field be suspended from the practice of law for five years, stayed, and placed on a five-year probation period. And finally, we recommend that after serving his actual suspension, Field be reinstated to practice law only if he establishes before the State Bar Court his rehabilitation, fitness to practice, and learning and ability in the law, as required in a standard 1.4(c)(ii)

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[16]A request for reinstatement may be filed five years after the effective date of the disbarment. (Rules Proc. of State Bar, Rule 662(b).)

proceeding. Although Field acknowledged at trial that he would do things differently now, we find this to be only a first step on the road to proving rehabilitation from the serious misconduct that he committed.

VIII. RECOMMENDATION

We recommend that Benjamin T. Field be suspended from the practice of law in the State of California for five years, that execution of that suspension by stayed, and that he be placed on probation for five years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first four years of the period of his probation, and he will remain suspended until the following requirement is met:

   a. He must provide proof to the State Bar Court of rehabilitation, fitness to practice and learning and ability in the general law before suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

2. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

3. Within 10 days of any change, he must report in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation, all changes in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes.

4. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

6. Within one year of the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the five-year period of stayed suspension will be satisfied and that suspension will be terminated.

IX. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Field be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of actual suspension imposed in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

X. RULE 9.20

We further recommend that Field be ordered to comply with 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, from the effective date of the Supreme Court order. Failure to do so may result in disbarment or suspension.

XI. COSTS

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

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.

Case Nos. 05-O-00815; 06-O-12344 (Cons.)

In the Matter of

BENJAMIN THOMAS FIELD

Hearing Judge

Hon. Patrice McElroy

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