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CONFIDENTIAL

State Bar Court of California Hearing Department		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar DAVID T. SAUBER Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 176554 Tel: (213) 765-1252	Case Number (s) 05-O-03627; 06-O-10464	(for Court's use) <div style="text-align: center;"> <p>LODGED</p> <p>JUL 08 2007</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div> <div style="text-align: center;"> <p>FILED</p> <p>JAN 27 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>
DAVID C. CARR 110 W. C Street, Suite 1504 San Diego, California 92101 Bar # 124510 Tel: (619) 696-0526	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: JOSEPH ROSSETTI Bar # 90051 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted November 29, 1979.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". -See Attachment
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 12/16/2004; 12/13/2006.)

Program

(Printed: 022007)



B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) **Prior record of discipline** [see standard 1.2(f)]

(a) State Bar Court case # of prior case 04-O-12264

(b) Date prior discipline effective April 10, 2005

(c) Rules of Professional Conduct/ State Bar Act violations:

(d) Degree of prior discipline (2) years Stayed Suspension, (2) years Probation, Restitution

(e) If Respondent has two or more incidents of prior discipline, use space provided below:

*3-700 (1)(i) - RPC
3-700(A)(2) RPC
606 911
3-110(A) RPC - 2 counts
6068 (M) BIF - 2 counts*

(2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

(1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

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- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **JOSEPH ROSSETTI**

MEMBER # 90051

CASE NUMBER(s): **05-O-03627; 06-O-10464**

FACTS AND CONCLUSIONS OF LAW:

Respondent, by entering into this Stipulation Re Facts, ^{AND} Conclusions of Law, ~~and Disposition~~, hereby waives any variance in the facts and charges as alleged in the Notice of Disciplinary Charges and the facts and conclusions set forth in the Stipulation as filed. ^{MR}

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Facts for Case No. 05-O-03627:

1. On January 11, 2005, Jan A. Niles retained Respondent to prepare documents to split the assets of a trust which Niles co-owned with her sister. At that time, Niles paid Respondent \$500.00. There was no written fee agreement. Respondent had previously performed legal services for Niles without incident, including drawing up a will and trust in December 2004.
2. In the next few weeks, Niles collected documents Respondent needed to begin the work on her case and sent them to him.
3. About six weeks after she retained Respondent, Niles called Respondent at his office telephone number which Respondent had provided to Niles to request a status report on her legal matter, since Respondent had not contacted her about her legal matter at all. Niles left a detailed message requesting a return call from Respondent, but despite his receipt of the message, Respondent failed to respond.
4. On March 14, 2005, after not hearing from Respondent for eight weeks, Niles faxed a letter to Respondent at his office fax number which he provided to Niles, stating that she had not received any paperwork from him and that she needed his legal advice as she was unsure what to do regarding some of the land which was an asset of the trust which was up for sale. Despite his receipt of Niles' faxed letter in which she had requested that he provide a status report on her legal matter, Respondent failed to respond.
5. Having heard nothing from Respondent in the ensuing weeks, Niles telephoned Respondent several more times, leaving detailed messages each time for Respondent to provide a status report on her legal matter. Despite his receipt of these messages, Respondent failed to respond to most of these phone calls. However, on one occasion, Respondent telephoned Niles and told her he had not yet gotten to Niles' legal matter since he had been engaged in trial and had been ill. He promised her that he would start work on her legal matter and get back to her right away. Despite his representations to Niles that he would work on her legal matter, Respondent still failed to perform any legal services and failed to get back to Niles in the next

few weeks.

6. On March 25, 2005, Respondent deposited Niles' check for \$500.00 which he received on January 11, 2005 into his client trust account at First National Bank, client trust account number 80145519. At the time he deposited Niles' check into his client trust account, Respondent had not performed any legal services of value to Niles and had earned none of the \$500.00 advanced fees paid by Niles.

7. On April 3, 2005, almost three months after she retained Respondent to resolve the trust issues, Niles sent a letter to Respondent thanking him for depositing her check, informing him that she was having problems with her sister, asking Respondent if he needed additional information to conclude her legal matter and requesting a status report on her legal matter. Niles' letter was placed in a sealed envelope correctly addressed to Respondent at Respondent's office address which he had provided to Niles. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service. The United States Postal Service did not return the letter as undeliverable or for any other reason. Despite his receipt of Niles' letter, Respondent failed to respond to Niles.

8. Having still heard nothing from Respondent, on May 5, 2005, Niles called the owner of the office suite where Respondent rented his office, Bob Lesh, to ask him where Respondent was. After briefly discussing the matter with Lesh, Lesh told Niles to speak directly to Respondent.

9. The next day, on May 6, 2005, Respondent called Niles. At that time, Niles told Respondent that she was disappointed with Respondent's performance and gave him two weeks to complete the work in her case. Respondent agreed to get to work on her legal matter and to provide her with a status report on her legal matter. Respondent failed to take any action on Niles' legal matter in the next two weeks.

10. On May 19, 2005, after not hearing from Respondent, Niles called Respondent and left a detailed message requesting Respondent to return her money and file so that she could retain another attorney to continue with her legal matter. Despite his receipt of her message, Respondent failed to return Niles' call.

11. Even after May 19, 2005 Niles called Respondent multiple times and left messages requesting her file and a refund of her unearned fees. Despite his receipt of her messages, Respondent failed to return her file and failed to refund the unearned fees.

12. Respondent failed to perform any legal services of value to Niles in regards to the preparation of documents to split the assets of a trust which Niles co-owned with her sister for which Respondent was paid \$500.

13. At no time did Respondent respond to any of the faxes and letters sent by Niles requesting a status report on her legal matter.

14. Respondent called Niles only two times, once in response to Niles' message and the final time after Niles contacted Respondent's landlord about the troubles she was experiencing in trying to contact Respondent.

15. At no time did Respondent release to Niles her client file or communicate with Niles regarding how Niles could obtain her client file.

16. Respondent provided no legal services of value to Niles. Respondent did not earn any of the advanced fees paid by Niles.

17. Respondent refunded the \$500 advanced fee with interest calculated at 10% per annum in March 2006.

Conclusions of Law for Case No. 05-O-03627:

18. COUNT ONE: By failing to perform any legal services of value to Niles from the time of his retention in January 2005 until the time he was terminated for his lack of communication in May 2005, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rule of Professional Conduct 3-110(A).

19. COUNT TWO: By failing to respond to Niles' letters and phone messages requesting status reports on her legal matter, Respondent failed to respond to Niles' reasonable status inquiries in wilful violation of Business and Professions Code section 6068(m).

20. COUNT THREE: By failing to release the client file to Niles, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers, in wilful violation of Rule of Professional Conduct 3-700(D)(1).

21. COUNT FOUR: By failing to refund the \$500.00 advanced fees to Niles until March 2006, ten months after his employment was terminated, Respondent wilfully violated Rule of Professional Conduct, rule 3-700(D)(2).

Facts for Case No. 06-O-10464:

22. On October 8, 2004, Respondent entered into a Stipulation as to Facts, Conclusions of Law and Disposition ("Stipulation") with the Office of the Chief Trial Counsel of the State Bar of California to resolve State Bar Case Nos. 04-O-12264 and 04-O-12952.

23. On October 22, 2004, the Hearing Department of the State Bar Court filed an order approving the Stipulation with minor modifications and recommending the disposition set forth in the Stipulation to the California Supreme Court. ~~A true and correct copy of the Stipulation as modified by the State Bar Court is attached as Exhibit 1 and incorporated herein by reference as though fully set forth at length.~~ *ADP*

24. That same day, on October 22, 2004, the Hearing Department's order approving the Stipulation was properly served by mail upon Respondent at his State Bar membership records address.

25. On March 11, 2005, the California Supreme Court filed an order in Case No. S129996 (State Bar Court Case Nos. 04-O-12264 and 04-O-12952) (the "Supreme Court order") that Respondent be suspended from the practice of law for two (2) years, that execution of the suspension be stayed, and that Respondent be placed on probation for two (2) years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving the Stipulation filed on October 22, 2004, including certain specified restitution conditions. ~~A true and correct copy of the Supreme Court order is attached as Exhibit~~ *ADP*

~~2 and incorporated herein by reference as though fully set forth at length.~~ The clerk of the Supreme Court properly served Respondent with the Supreme Court order at his State Bar membership records address.

26. The Supreme Court order became effective on April 10, 2005, thirty days after it was entered.

27. Pursuant to the Supreme Court order, Respondent was ordered to comply with the following terms and conditions of probation, among others:

- i. to comply with the State Bar Act and the Rules of Professional Conduct during the period of probation;
- ii. to report to the State Bar Membership Records Office and the Office of Probation all changes of information within ten days of any change, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
- iii. to submit to the Office of Probation written quarterly reports each January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, certifying under penalty of perjury that he has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter or part thereof covered by the report and to file a final report no earlier than twenty days prior to the expiration of the probation period and no later than the last day of said period;
- iv. to attend and complete State Bar Ethics School within one year of the effective date of the disciplinary order, which was April 10, 2005;
- v. to take and pass the Multistate Professional Responsibility Examination ("MPRE") within one year after the effective date of the order, which was April 10, 2005; and
- vi. to pay restitution to Mary and James Crostini or the Client Security Fund, if appropriate, the amount of \$250.00 plus 10% interest per annum accruing from February 11, 2004, and provide proof thereof to the Office of Probation, no later than six (6) months of the effective date of the discipline herein.

28. On April 7, 2005, Probation Deputy Yolanda Acosta of the Office of Probation wrote a letter to Respondent in which she reminded Respondent of the terms and conditions of his suspension and probation imposed pursuant to the Supreme Court order. In the April 7, 2005 letter, Ms. Acosta specifically advised Respondent regarding his obligations to file quarterly probation reports, with the first due on July 10, 2005, to pay restitution by or before October 10, 2005, to provide to the Office of Probation satisfactory proof of attendance at a session of Ethics School and passage of the test by or before April 10, 2006, and to take and pass the MPRE by or before April 10, 2006. Enclosed with the letter to Respondent were, among other things, copies of the Supreme Court order, the relevant portion of the Stipulation setting forth the conditions of Respondent's probation, a Quarterly Report Instructions sheet, a blank Quarterly Report form specially tailored for Respondent to use in submitting his quarterly reports and a schedule for the MPRE.

29. Ms. Acosta's April 7, 2005 letter to Respondent was mailed on or about April 7, 2005 via the United States Postal Service, first class postage prepaid, in a sealed envelope addressed to Respondent at his then current State Bar membership records. The April 7, 2005

letter was not returned as undeliverable by the United States Postal Service or for any other reason.

30. Respondent received the April 7, 2005 letter from Ms. Acosta.

31. On December 5, 2005, Ms. Acosta wrote another letter to Respondent in which she stated that the Office of Probation had been trying to reach Respondent, leaving several messages regarding his probation matter. Again, Ms. Acosta reminded Respondent of the conditions of his probation in her second letter.

32. Ms. Acosta's December 5, 2005 letter to Respondent was mailed on or about December 5, 2005 via the United States Postal Service, first class postage prepaid, in a sealed envelope addressed to Respondent at his official State Bar membership records address. The December 5, 2005 letter was not returned as undeliverable by the United States Postal Service or for any other reason.

33. Respondent received the December 5, 2005 letter from Ms. Acosta.

34. On or about May 2, 2006, Respondent filed the overdue probation reports that were due on July 10, 2005, October 10, 2005, January 10, 2006 and April 10, 2006 with the Office of Probation.

35. Respondent failed to make the restitution payment due to the Crostinis by October 10, 2005, until he paid in March 2006.

36. Respondent did not take and pass the State Bar Ethics School within one year of the effective date of the Supreme Court's discipline order (April 10, 2006). Respondent did not complete Ethics School until June 2006.

Conclusions of Law for Case No. 06-O-10464:

37. COUNT FIVE: By failing to file the required quarterly reports and failing to provide proof that he paid the required restitution mandated by the Supreme Court order, Respondent wilfully violated Business and Professions Code section 6068(k).

DISCLOSURE OF PENDING INVESTIGATIONS/PROCEEDINGS NOT RESOLVED BY THIS STIPULATION.

The disclosure date referred to, on page one, paragraph A.(6), was February 9, 2007.

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In the Matter of JOSEPH ROSSETTI Member #90051	Case number(s): 05-O-03627; 06-O-10464
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

02/21/07
Date

2/22/07
Date

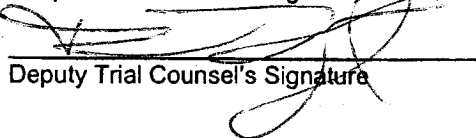
2/27/07
Date


Respondent's Signature

JOSEPH ROSSETTI
Print Name


Respondent's Counsel Signature

DAVID C. CARR
Print Name


Deputy Trial Counsel's Signature

DAVID T. SAUBER
Print Name

(Do not write above this line.)

In the Matter Of JOSEPH ROSSETTI Member #90051	Case Number(s): 05-O-03627; 06-O-10464
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

07/02/07
Date


Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 3, 2007, I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND
ORDERS, CONTRACT AND WAIVER FOR PARTICIPATION IN THE
STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM AND
STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

in a sealed envelope for collection and mailing on that date as follows:

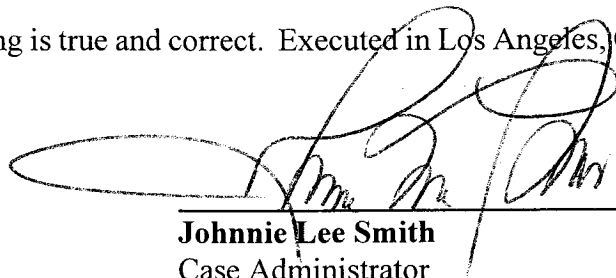
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR
110 W C ST STE 1504
SAN DIEGO, CA 92101**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ERIC HSU , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **July 3, 2007**.



Johnnie Lee Smith
Case Administrator
State Bar Court