

State Bar Court of California

Hearing Department

Los Angeles

PUBLIC MATTER

Counsel For The State Bar Suzan J. Anderson Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015 (213) 765-1209	Case Number (s) 07-O-14934	(for Court's use) FILED SEP 03 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Bar # 160559	Submitted to: Assigned Judge	
In Pro Per Respondent Carolyn Probasco Gallinghouse 7305 Melotte Street San Diego, California 92119 (619) 209-1061		
Bar # 149650	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter Of: CAROLYN PROBASCO GALLINGHOUSE		
Bar # 149650	STAYED SUSPENSION; NO ACTUAL SUSPENSION	
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 **December 5, 1990**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (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. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) 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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ costs added to membership fee for calendar year following effective date of discipline.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles following the effective date of the Supreme Court Order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

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
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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.
- (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. **Respondent has cooperated fully throughout this proceeding by providing honest answers to any question from the State Bar.**
- (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. **Respondent immediately came into compliance with the MCLE requirements when she was informed she was administratively suspended for failure to comply with the MCLE requirements.**
- (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. **Please see Attachment, pages 9 and 10.**
- (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. **Please see Attachment, pages 9 and 10.**
- (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

Please see Attachment, pages 9 and 10.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, 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.
- (3) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) ☒ Respondent 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, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested,

in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| ☐ Substance Abuse Conditions | ☒ Law Office Management Conditions |
| ☐ Medical Conditions | ☐ Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

(Do not write above this line.)

Attachment language (if any):

Please see Attachment, pages 8 through 12.

In the Matter of
CAROLYN PROBASCO
GALLINGHOUSE, 149650

Case number(s):
07-O-14934

A Member of the State Bar

Law Office Management Conditions

- a. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within days/six (6) months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six (6) hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: CAROLYN PROBASCO GALLINGHOUSE

CASE NUMBER(S): 07-O-14934

FACTS AND CONCLUSIONS OF LAW.

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

FACTS

1. Respondent failed to comply with the State Bar of California Minimum Continuing Education ("MCLE") requirement as required for the compliance period ending January 31, 2007. Accordingly, on June 15, 2007, the Office of Member Services of the State Bar of California ("Member Services") properly mailed to Respondent at Respondent's membership records address a MCLE Non-Compliance 60-day Notice informing Respondent that if she failed to comply with the minimum continuing legal education requirement by August 15, 2007, she would be enrolled as an inactive member of the State Bar and would not be permitted to practice law until such time as adequate proof of compliance was received by the State Bar. Respondent did not receive the Notice. On June 27, 2007, the Notice was returned to Member Services by the United States Postal Service marked, "Return to Sender Not at This Address."

2. On July 25, 2007, Member Services properly mailed to Respondent at Respondent's membership records address a MCLE Non-Compliance Final Notice again informing Respondent that to avoid being placed on Not Entitled to Practice status, she must demonstrate her MCLE compliance by August 15, 2007. Respondent did not receive the Notice. On August 3, 2007, the Notice was returned to Member Services by the United States Postal Service marked, "No longer here no forward on file."

3. On August 24, 2007, Member Services properly mailed to Respondent at Respondent's membership records address a MCLE Non-Compliance Notice of Enrollment on Not Eligible Status informing Respondent that she had been enrolled on Not Eligible Status effective August 16, 2007, that she was not eligible to practice law as of that date, and that she would not be eligible to practice until she had been reinstated to Active status. Respondent did not receive the Notice. On September 6, 2007, the Notice was returned to Member Services by the United States Postal Service marked, "Return to Sender Unable to

Forward.”

4. On October 4, 2007, Respondent forwarded a completed compliance card and the required fees to Member Services and was returned to Active Status.

5. From August 16, 2007 through October 4, 2007, Respondent should have been aware that she was enrolled on Not Eligible Status for failure to comply with the MCLE requirement.

6. On August 21, 2007, and August 28, 2007, Respondent appeared in the Superior Court for the State of California, County of San Diego, on behalf of her clients, Richard and Joyce Flannery, in case number GIC863599, entitled *Richard Flannery and Joyce Flannery v. San Diego Van & Storage, et al.*, for ex parte matters.

CONCLUSIONS OF LAW

By appearing in Superior Court on August 21, 2007 and August 28, 2007, while she was on Not Entitled status, Respondent held herself out as practicing or entitled to practice law and practiced and/or attempted to practice law when she was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126 and thereby failed to support the laws of the State of California in wilful violation of Business and Professions Code section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 14, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 14, 2008, the costs in this matter are \$1,983.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

MITIGATING CIRCUMSTANCES.

Respondent has had no prior record of discipline since being admitted to the practice of law on December 5, 1990.

Respondent has informed the State Bar of several family problem issues that contributed to her failure to timely comply with her MCLE requirements. On August 31, 2004,

Respondent's mother died of cancer after previous treatments failed. Then in April 2005, her sister who was two years older than Respondent died suddenly of a heart attack.

Later in 2005, Respondent was involved in a major car accident which ultimately required back surgery in March 2006. Due to the back surgery, Respondent was unable to work for over one year.

AUTHORITIES SUPPORTING DISCIPLINE.

Respondent has advised the State Bar that during the time she should have received the Notices from Member Services and the final Notice placing her on Not Entitled status for failure to comply with MCLE, Respondent was not aware the her membership records address was not current. Respondent had always relied on the office administrator of whatever firm she worked for to keep the address current and keep track of the MCLE. In March 2006, she had back surgery and after being off work for over a year, she accepted a position with a law firm in May 2007. That law firm was located at 3200 4th Avenue, #101, San Diego, California and the staff there took the steps to have Respondent's address changed. Unfortunately, this employment only lasted one week. When Respondent left the firm, she gave them a forwarding address but she did not contact the State Bar to change the address. When Respondent's mail, including the Notices, was received from the State Bar, the staff at that firm returned it instead of forwarding it to Respondent. In her current position, there is no staff person to handle any address correction or MCLE and Respondent is well aware that she is responsible for keeping her address up to date and fulfilling her MCLE requirements.

Respondent first learned that she was on not entitled status in mid-September 2007, when she went to New Mexico on an unrelated legal matter. Opposing counsel brought the matter to Respondent's attention and she did not participate in the New Mexico legal proceeding. When Respondent returned to California, she completed the MCLE requirements and was returned to active status on October 4, 2007.

Pursuant to Standard 1.3, the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are, "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession."

Standard 2.6 imposes disbarment to suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3 for violation of Business and Profession Code sections 6068, 6125 and 6126.

The Supreme Court gives the Standards "great weight" and will reject a recommendation

consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. *In re Naney* (1990) 51 Cal.3d 186, 190; *see also, In re Silverton* (2005) 36 Cal.4th 81, 91, 92. Further, although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is compelling, well-defined reason to do so. *See, Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *see also, Bates v. State Bar* (1990) 52 Cal.3d 1056, 1060, fn. 2.

Practicing law while suspended has resulted in a range of discipline from suspension to disbarment, depending on the circumstances of the misconduct, including the nature of any companion charges and the existence and gravity of prior disciplinary proceedings.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney had engaged in the unauthorized practice of law by giving legal advice and preparing legal papers for a client during the period of time he was suspended for nonpayment of membership fees. In addition, he wilfully deceived the client and another, avoiding their efforts to communicate with him and eventually abandoned their cases. Farnham had been previously disciplined. The Supreme Court imposed two years suspension, stayed, two years probation and six months actual suspension.

In *Chasteen v. State Bar* (1985) 40 Cal.3d 586, the attorney was found culpable of the unauthorized practice of law as well as deceit of clients, commingling and failure to return fees. The Supreme Court imposed a two-month suspension by a four-to-three decision.

In *Morgan v. State Bar* (1990) 51 Cal.3d 598, the attorney engaged in the unauthorized practice of law and, in addition, obtained a pecuniary interest adverse to his client through the use of the client's credit card. Morgan had four prior disciplinary proceedings, one of which also involved the unauthorized practice of law. The Supreme Court ordered disbarment, finding Morgan's behavior demonstrated "a pattern of professional misconduct and an indifference to this court's disciplinary orders . . ." (*Id.* at page 607.)

Respondent does not dispute that the State Bar mailed notices to her at what was listed as her membership records address, but Respondent was not aware that the address had not been undated. It appears that she did not have actual notice of the impending suspension or of its imposition before she made the appearances in Superior Court, such that, for purposes of this stipulation, she is not culpable of an act of moral turpitude.

As the Court found in *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319; appearing while suspended or enrolled inactive does not inherently involve moral turpitude. (Citing *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229 at page 239.) Nor does it necessarily involve deception of the court, if the attorney is unaware of his or her inactive status. Since involuntary inactive enrollment orders do not have to be served

by personal service, it is not impossible that an attorney may practice while inactive without being aware of the fact. Evidence that an attorney made a single court appearance while ignorant of his or her inactive status is insufficient to establish clearly and convincingly that the attorney acted with moral turpitude of intent to deceive the court. *Heiner* at page 319.

The only count is the unauthorized practice of law, with no other companion charges and no prior discipline. Respondent's misconduct was not as egregious as *Farnham*, which also involved deceit and abandonment of clients; nor *Chasteen*, which also involved deceit, commingling and failure to return fees; nor *Morgan*, which also included obtaining a pecuniary interest adverse to his client and four priors.

Respondent practiced law in making the appearances when she was not authorized to do so. However, she has no prior discipline and there was no harm to the client, accordingly, the recommended discipline of one year stayed suspension and two years probation with conditions falls within the Standards and case law.

(Do not write above this line.)

In the Matter of
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SIGNATURE OF THE PARTIES

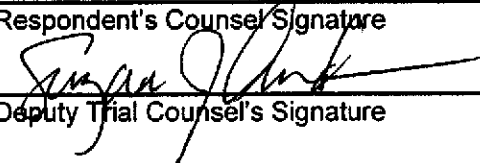
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

8/20/08
Date


Respondent's Signature

CAROLYN PROBASCO
GALLINGHOUSE
Print Name

8/21/08
Date


Respondent's Counsel Signature
Deputy Trial Counsel's Signature

Print Name
SUZAN J. ANDERSON
Print Name

(Do not write above this line.)

In the Matter Of
CAROLYN PROBASCO GALLINGHOUSE, 149650

Case Number(s):
07-0-14934

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 stipulated facts and disposition are APPROVED and the DISCIPLINE
RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates 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. (See rule 135(b), Rules of Procedure.) The
effective date of this disposition is the effective date of the Supreme Court order herein,
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Date

8/28/08

Judge of the State Bar Court

RICHARD A. HONN

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 September 3, 2008, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

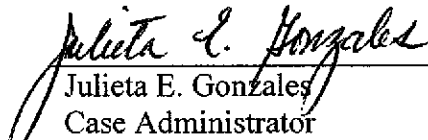
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CAROLYN P GALLINGHOUSE ATTORNEY AT LAW
7305 MELOTTE ST
SAN DIEGO, CA 92119

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

Suzan J. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 3, 2008.



Julieta E. Gonzales
Case Administrator
State Bar Court