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| State Bar Court of California Hearing Department Los Angeles REPROVAL | | |
|---|--|---|
| <p>Counsel For The State Bar</p> <p>Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004</p> <p>Bar # 194283</p> | <p>Case Number(s): 10-O-10687-LMA</p> | <p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED <i>[Signature]</i></p> <p style="text-align: center;">NOV 30 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p> |
| <p>In Pro Per Respondent</p> <p>Abel Hernandez 4614 Hawthorn Woods San Antonio, TX 78249 (210) 214-1534</p> <p>Bar # 159902</p> | <p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> | |
| <p>In the Matter of: ABEL HERNANDEZ</p> <p>Bar # 159902</p> <p>A Member of the State Bar of California (Respondent)</p> | <p>PRIVATE REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |

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 October 14, 1992.
- (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 11 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."



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- (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 are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

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- (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:

None.

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. See Stipulation Attachment, page 7, section "C", paragraph 1.
- (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. See Stipulation Attachment, page 7, section "C", paragraph 2.
- (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. See Stipulation Attachment, page 7, section "C", paragraph 3.
- (5) **Restitution:** Respondent paid \$ 1,997.00 on 09/26/2011 in restitution to Andres Vasquez without the threat or force of disciplinary, civil or criminal proceedings. See Stipulation Attachment, page 7, section "C", paragraph 4.
- (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.

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- (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:

None.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one (1) year.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) 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.
- (4) 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.

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- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (6) 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 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 monitor.
- (7) 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 conditions attached to the reproof.
- (8) 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 Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: See Stipulation Attachment, page 9, section "F".
- (9) 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.
- (10) 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 of the effective date of the reproof.

No MPRE recommended. Reason: See Stipulation Attachment, page 9, section "G".

- (11) The following conditions are attached hereto and incorporated:

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

None.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ABEL HERNANDEZ

CASE NUMBER(S): 10-O-10687

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on May 13, 2011, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW.

ABEL HERNANDEZ ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified *Rules of Professional Conduct*.

Case No. 10-O-10687 (Complainant: Andres Vasquez)

Facts Supporting Culpability:

1. At all times relevant herein, Respondent, an attorney licensed to practice law in Texas and California, has been advertising his services on the Internet as an expert on the legal and business aspects of starting a new church.

2. In March 2010, Pastor Andres Vasquez ("Vasquez") asked his administrative assistant, Virginia Tellers ("Tellers"), to search the Interact for an expert to help Vasquez start his new church, New Living Way, in California.

3. On March 15, 2010, Tellers contacted Respondent by telephone. Respondent quoted Tellers \$1,997.00 for the following legal services: (i) consultation to determine the client's vision for his church; (ii) inform and educate the client on the ecclesiastical requirements of a church; (iii) review and revise the church's articles of incorporation; and (iv) obtain tax exempt status for the client's church with an additional \$750 fee as well as a \$35 fee for the Secretary of State. Tellers reported her conversation with Respondent to Vasquez.

4. On March 16, 2010, Vasquez called Respondent. Respondent reiterated to Vasquez the legal services which he would provide for \$1,997 in advanced fees. Vasquez agreed to employ Respondent.

5. Vasquez never provided Respondent with his organization's financial records for the previous three years which was required before the Internal Revenue Service could make a tax-exempt status determination.

6. On March 17, 2010, Vasquez mailed to Respondent a \$1,997.00 check for his legal services.

7. On March 23, 2010, Respondent negotiated Vasquez's \$1,997.00 check.

8. Thereafter, Respondent did not provide Vasquez with legal services or assistance in starting Vasquez's church.

9. Between on April 1 and July 20, 2010, Vasquez and Tellers repeatedly telephoned and emailed Respondent, requesting a return call or an email response.

10. Respondent received the telephone messages and the emails but did not return the messages or respond to the emails.

Conclusions of Law:

11. By not providing Vasquez with legal services or assistance in starting Vasquez's new church, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

12. By not returning his client's multiple calls and emails, Respondent failed to respond to client inquiries in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

C. FACTS SUPPORTING MITIGATION.

1. Respondent has no prior record of discipline and had been admitted to the practice of law in California for nearly eighteen (18) years when the misconduct herein occurred.¹

2. Respondent has exhibited candor and cooperation with the State Bar of California in that he has stipulated to facts, conclusions of law and level of discipline.²

3. Respondent has expressed remorse to the State Bar for his misconduct and acknowledged his wrongdoing.³

4. On September 26, 2011, Respondent paid \$1,997.00 to his client Andres Vasquez as restitution.

D. AUTHORITIES SUPPORTING DISCIPLINE.

¹ Standard 1.2(e)(i).

² Standard 1.2(e)(v).

³ Standard 1.2(e)(vii).

Applicable Standards:

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, the sanction imposed shall be the more or most severe of the different applicable sanctions. Standard 1.6(b) provides that a greater or lesser degree of discipline than the appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

Standard 2.4(b), in relevant part, provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 provides that the culpability of a member for violation of any provision of the Business and Professions Code or any Rule of Professional Conduct not specified in the Standards shall result in reproof or suspension, according to the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3.

Based on Standard 1.6(a), the recommended sanction for Respondent's misconduct herein is found in Standard 2.4(b), which provides for reproof or suspension.

Aggravating & Mitigating Circumstances:

Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. No aggravating circumstances exist in this matter.

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the standards where mitigating circumstances exist. Four mitigating circumstances exist in this matter. First, pursuant to Standard 1.2(e)(i), Respondent has no prior record of discipline and had been admitted to the practice of law in California for nearly eighteen (18) years when the misconduct herein occurred. Second, pursuant to Standard 1.2(e)(v), Respondent has exhibited candor and cooperation with the State Bar of California in that he has stipulated to facts, conclusions of law and level of discipline. Third, pursuant to Standard 1.2(e)(vii), Respondent has expressed remorse to the State Bar for his misconduct and acknowledged his wrongdoing. Fourth, on September 26, 2011, Respondent paid \$1,997.00 to his client Andres Vasquez as restitution.

Caselaw:

In *In the Matter of Respondent G*,⁴ Respondent G failed to notify his client that she would owe an inheritance tax to the State of California. He later failed to tell her that a Superior Court had fixed the tax at \$818, and that this was enforceable as a judgment against her. Four years later, the state Controller notified Respondent G that the amount then owed, including interest, was \$1,273.57. Respondent G again failed to notify his client, but the Controller notified her. Two years later, the Controller recorded a judgment lien against the client. The client then paid the \$818 and G agreed to pay the interest of \$455.57, but failed to do so.

The Review Department held that the failure to notify the client initially of her obligation to pay inheritance tax, and the subsequent failure to inform the client of the fixed assessment, were violations of the precursor to Rule 3-110(A). The Review Department imposed a private reproof with the condition that Respondent G pay restitution for the remaining \$455.57 to satisfy the judgment lien, as he had agreed earlier.

In *In the Matter of Ward*,⁵ the Review Department recognized that failures to communicate were sometimes also failures to perform with competence, but stated that charging both for the same facts would be duplicative.

Respondent clearly failed to communicate adequately with the client. At the very first inquiry, his duty was to communicate in writing that he was waiting on the necessary financial records. He did not cause the client any appreciable harm, and he ultimately provided a full refund.

E. PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A. (7) was November 18, 2011.

F. STATE BAR ETHICS SCHOOL EXCLUSION.

Respondent resides outside California and is unable to attend State Bar Ethics School. As an alternative to State Bar Ethics School, the parties agree that Respondent will complete the following courses: Six (6) hours of minimum Continuing Legal Education ("MCLE") courses in general legal ethics and as approved by the Office of Probation. 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.)

G. MPRE EXCLUSION.

The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case.⁶

⁴ (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175.

⁵ (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 57

⁶ See *In the Matter of Respondent G* (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181.

H. DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

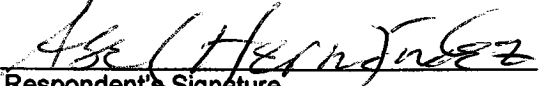
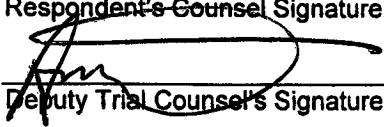
| <u>Case No.</u> | <u>Count</u> | <u>Alleged Violation</u> |
|-----------------|--------------|--------------------------|
| 10-O-10687 | THREE | RPC 3-700(D)(2) |
| 10-O-10687 | FOUR | B&P 6068(j) |

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| In the Matter of: ABEL HERNANDEZ | Case number(s): 10-O-10687-LMA |
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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, Conclusions of Law, and Disposition.

| | | |
|------------------------------|--|--------------------------------------|
| <u>Nov. 22, 2011</u> Date | <u></u> Respondent's Signature | <u>Abel Hernandez</u> Print Name |
| <u>11/23/2011</u> Date | <u></u> Deputy Trial Counsel's Signature | <u>Ashod Mooradian</u> Print Name |

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| In the Matter of: ABEL HERNANDEZ | Case Number(s): 10-O-10687-LMA |
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Not 30, 2011
Date


Judge of the State Bar Court

LUCY ARMENDARIZ

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on November 30, 2011, 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:

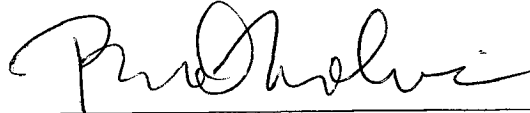
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ABEL HERNANDEZ
4614 HAWTHORN WOODS
SAN ANTONIO, TX 78249

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

ASHOD MOORADIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 30, 2011.



Bernadette C.O. Molina
Case Administrator
State Bar Court