

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER	
Counsel For The State Bar Kimberly G. Anderson Senior Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1083 Bar # 150359	Case Number(s): 11-O-16372-RAH	For Court use only FILED MAY 24 2013 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES		
Counsel For Respondent Susan L. Margolis Margolis & Margolis, LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 104629	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING			
In the Matter of: JAMES CONNOLLY MITCHELL Bar # 87151 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED			

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 June 29, 1979.
- (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 14 pages, not including the order.

(Effective January 1, 2011)



(Do not write above this line.)

- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - 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.

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.
- (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. See Stipulation Attachment at page 11.

(Do not write above this line.)

- (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. See Stipulation Attachment at page 11.
- (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.
- (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.

(Do not write above this line.)

- (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:

See Stipulation Attachment at pages 11-12.

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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be 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)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.
- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(Do not write above this line.)

- (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.
- (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 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.

- (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 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.
- (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 probation conditions.
- (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: .
- (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) 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:

- (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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

(Do not write above this line.)

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:** Submission to the Office of Probation of satisfactory proof of passage of the MPRE within six months' prior to the effective date of the Supreme Court order in this matter shall satisfy the MPRE condition set forth in paragraph F. (1) on page 5 of this Stipulation. Submission to the Office of Probation of satisfactory proof of attendance at State Bar Ethics School and passage of the test within six months prior to the effective date of the Supreme Court order in this matter shall satisfy the State Bar Ethics School condition set forth in paragraph E.(8) on page 5 of this Stipulation.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES CONNOLLY MITCHELL

CASE NUMBER: 11-O-16372-RAH

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 11-O-16372 (Complainant: Dennis Gong)

FACTS:

1. On July 30, 2009, Luce, Forward, Hamilton and Scripps, LLP ("Luce") filed a collection lawsuit against David Gong ("Gong") and RFG Oil, Inc. ("RFG") in San Diego County Superior Court Case No. 37-2009-00095130-CU-CL-CTL seeking to collect \$183,281.89 in attorney's fees for prior services allegedly rendered (the "collection lawsuit").

2. In October 2009, Gong hired Respondent to defend him and RFG in the collection lawsuit and to file a cross-complaint against Luce for alleged legal malpractice. At all relevant times, Gong was a board member and a 51% shareholder of RFG.

3. On October 20, 2009, Respondent appeared in the collection lawsuit on behalf of Gong and RFG. On October 20, 2009, Respondent filed an answer to the complaint on behalf of Gong and RFG and a cross-complaint against Luce for alleged legal malpractice.

4. On November 5, 2009, Luce served Respondent with the following discovery to be answered by Gong and RFG: 1) Requests for Admissions, Set No. One; 2) Form Interrogatories, Set No. One; and 3) Requests for Production of Documents, Set No. One (collectively the "November 5, 2009 discovery"). Respondent received the November 5, 2009 discovery. However, Respondent failed to timely prepare and serve responses to the November 5, 2009 discovery on behalf of Gong and RFG.

5. On January 20, 2010, Allan Herzlich ("Herzlich"), the attorney for Luce, sent Respondent a meet and confer letter stating that he had not received responses to the November 5, 2009 discovery from Gong and RFG, granting them an additional ten days to respond to the discovery, and stating that he would be filing a motion to compel responses to the discovery and for monetary sanctions if he did not receive the discovery responses. Respondent received the letter, but did not serve responses to the November 5, 2009 discovery on behalf of Gong and RFG.

6. On March 12, 2010, Luce filed and served Respondent with the following four motions: 1) Motion to Compel Answers to Form Interrogatories and for Monetary Sanctions against Gong and Respondent; 2) Motion to Compel Answers to Form Interrogatories and for Monetary Sanctions against RFG and Respondent; 3) Motion to Compel Production of Documents and for Monetary Sanctions against Gong and Respondent; and 4) Motion for an Order Deeming Facts Admitted and for Monetary

Sanctions against Gong and Respondent (collectively "the four discovery motions"). The four discovery motions were set for hearing on April 16, 2010. Respondent received the four discovery motions. Respondent had actual notice of the April 16, 2010 hearing.

7. On April 5, 2010, Respondent filed a first amended cross-complaint against Luce on behalf of Gong and RFG.

8. On April 5, 2010, Respondent filed a single opposition to the four discovery motions on behalf of Gong and RFG consisting of two pages and no supporting declarations. Respondent agreed that his clients would provide the discovery responses and argued that the sanctions were excessive.

9. On April 16, 2010, the court in the collection lawsuit conducted a hearing on the four discovery motions. The court granted all four of the motions and ordered Gong and RFG to answer each of the discovery requests without objection within ten days. The court also deemed admitted all facts contained in the requests for admission. The court also ordered Respondent, Gong and RFG, jointly and severally, to pay monetary sanctions in the amount of \$2,160 within 30 days. Respondent appeared at the April 16, 2010 hearing and had knowledge of the court's rulings.

10. On April 20, 2010, Gong emailed Respondent draft responses to the request for admissions and attached the signed verification.

11. On April 27, 2010, Respondent served Luce with Gong's Responses to Requests for Admissions. But Respondent did not serve Luce with answers to the Form Interrogatories and Requests for Production of Documents at any time and Respondent did not pay the \$2,160 in monetary sanctions.

12. On May 5, 2010, Luce filed an amended notice of demurrer to Gong and RFG's first amended cross-complaint against Luce. Luce's counsel served Respondent with a copy of the amended notice of demurrer, indicating the hearing on the demurrer was scheduled for June 4, 2010. Respondent received the amended notice of demurrer and had notice of the June 4, 2010 hearing.

13. Respondent did not file an opposition on behalf of Gong and RFG to Luce's demurrer to Gong and RFG's first amended cross-complaint.

14. On June 4, 2010, the court held the hearing on the amended notice of demurrer to Gong and RFG's first amended cross-complaint against Luce. The court sustained the demurrer and granted Gong and RFG ten days' leave to amend their cross-complaint against Luce. Respondent did not appear at the hearing. Counsel for Luce served Respondent with notice of ruling on June 4, 2010 and Respondent received notice of the court's ruling.

15. On June 15, 2010, Respondent filed a second amended cross-complaint against Luce on behalf of Gong and RFG.

16. On July 2, 2010, Respondent and Herzlich appeared in court in the collection lawsuit and the court set the case for a trial readiness conference on November 19, 2010 and a jury trial on December 10, 2010. Respondent had notice of these orders.

17. On July 8, 2010, Luce filed a notice of demurrer and demurrer to Gong and RFG's second amended cross-complaint against Luce. Luce's counsel served Respondent with a copy of the notice of demurrer and demurrer, indicating the hearing on the demurrer was scheduled for September

10, 2010. Respondent received the notice of demurrer and demurrer and had actual notice of the September 10, 2010 hearing.

18. On August 2, 2010, Luce filed a notice of motion and motion to strike answers and enter default against Defendants Gong and RFG for failing to comply with the court order compelling defendants to answer form interrogatories and to produce documents and to pay monetary sanctions. Luce's counsel served Respondent with a copy of the motion to strike answers and enter default against Defendants Gong and RFG, indicating the hearing on the motion was scheduled for September 10, 2010. Respondent received the motion and had notice of the September 10, 2010 hearing.

19. On August 30, 2010, Respondent filed an opposition to Luce's demurrer to Gong and RFG's second amended cross-complaint.

20. Respondent did not file an opposition to the motion to strike answers and enter default against Defendants Gong and RFG.

21. On September 10, 2010, the court in the collection lawsuit held a hearing on Luce's demurrer to Gong and RFG's second amended cross-complaint, and on Luce's motion to strike answers and enter default against Defendants Gong and RFG. Respondent did not appear at the hearing. The court issued an order overruling the Demurrer. The court also issued an order on the motion to strike answers and enter default against Defendants Gong and RFG, which stated:

Cross-Defendant Luce, Forward, Hamilton & Scripps, LLP's unopposed motion to strike the answers and enter the defaults of Defendants David R. Gong and RFG Oil, Inc. for failure to comply with the 4/16/10 court order to answer Form Interrogatories and to Produce Documents and to pay monetary sanctions of \$2,160 against said Defendants and their counsel of record, Mitchell & Gilleon, jointly and severally, within thirty (30) days, is denied in part and granted in part. D[efendant]s are to forthwith meaning, 'within ten (10) days of the notice of this ruling,' answer the discovery and pay the previously awarded sanctions. Further, Defendants and their counsel of record, Mitchell & Gilleon, jointly and severally, are ordered to pay P[laintiff]'s further monetary sanctions of \$1,440. While the court does not conclude today that an order striking the answer is appropriate, this could change if the discovery abuse persists.

22. On September 10, 2010, counsel for Luce served Respondent with a notice of ruling and attached a copy of the court's September 10, 2010 minute order. Respondent received the court's ruling. Respondent did not serve responses to the form interrogatories and request for production of documents within ten days as ordered by the court, and Respondent did not pay the monetary sanctions of \$2,160 within ten days or pay the additional \$1,440 in monetary sanctions as ordered by the court.

23. On September 20, 2010, Luce filed a general denial to the second amended cross-complaint.

24. On October 7, 2010, Luce filed a motion to strike answers and enter default against Defendants Gong and RFG for failing to comply with the court order compelling defendants to answer form interrogatories, produce documents, and pay monetary sanctions. The motion was based upon the failure of Respondent, Gong and RFG to comply with the court's April 16, 2010 and September 10,

2010 court orders. Luce's counsel served Respondent with a copy of the motion to strike answers and enter default against Defendants Gong and RFG, indicating the hearing on the motion was scheduled for November 12, 2010. Respondent received the motion and had notice of the November 12, 2010 hearing.

25. Respondent did not file an opposition to Luce's motion to strike answers and enter default against Defendants Gong and RFG.

26. On November 12, 2010, the court in the collection lawsuit held a hearing on Luce's motion to strike answers and enter default against Defendants Gong and RFG. Respondent did not appear at the hearing. The court issued an order striking the answer and cross-complaint of Gong and RFG and entering their default as a result of their failure to comply with the court's April 16, 2010 and September 10, 2010 orders to provide responses to form interrogatories and requests for production of documents, and due to the failure of Respondent, Gong and RFG to pay the \$2,160 and \$1,440 in monetary sanctions. The court also ordered Respondent, Gong and RFG, jointly and severally, to pay the sanctions within ten days of its ruling.

27. On November 12, 2010, counsel for Luce served Respondent with a notice of ruling and attached a copy of the court's November 12, 2010 minute order. Respondent received actual notice of the court's ruling. Respondent did not pay the monetary sanctions of \$2,160 and \$1,440 within ten days as ordered by the court. The court vacated the trial readiness conference set for November 19, 2010.

28. On December 10, 2010, Respondent failed to appear for the jury trial. On December 10, 2010, counsel for Luce served Respondent with a notice of ruling indicating that a default prove-up hearing was scheduled for December 16, 2010. Respondent received notice of the December 16, 2010 default prove-up hearing.

29. On December 16, 2010, the court in the collection lawsuit heard the default prove-up hearing. Respondent failed to appear. The court entered a default judgment against Gong and RFG, jointly and severally, in the amount of \$265,126.58. Respondent did not take any action to set aside the default judgment.

30. While a default judgment was entered against Respondent's clients in the amount of \$265,126.58, the evidence does not necessarily support a finding that the clients would have achieved a better result had the clients received their day in court. Gong and RFG did file a civil suit for legal malpractice against Respondent, the parties reached a confidential settlement and the civil malpractice suit was dismissed. However, Gong and RFG did lose their right to litigate their case against Luce as a result of Respondent's misconduct.

31. On March 9, 2011, Respondent belatedly paid counsel for Luce the \$3,600 (\$2,160 and \$1,440) in monetary sanctions ordered by the court.

32. On March 11, 2011, Gong sent a letter via facsimile and email to Respondent demanding that Respondent turn over his client file to him by no later than March 16, 2011. Respondent received the letter but did not respond to it and did not turn over the file.

33. On May 2011, Gong retained new counsel, attorney Maria Palmieri ("Attorney Palmieri"). In May 2011, Palmieri made several requests upon Respondent, demanding that he turn over the client file to her. Respondent received the requests, but did not turn over the file.

34. On August 26, 2011, when Respondent had still not returned the client file, Gong filed a State Bar complaint against Respondent. Thereafter, Respondent turned over the file to Gong.

CONCLUSIONS OF LAW:

35. By failing to prepare and serve timely responses to the November 5, 2009 discovery on behalf of his clients, by failing to oppose the August 2 and October 7, 2010 motions to strike answers and enter defaults against Gong and RFG, by failing to litigate the case, by failing to assist his clients in providing responses to requests for production of documents and form interrogatories, by permitting his clients' default to be entered through his own inaction, by failing to attend the default prove-up hearing and permitting judgment to be entered against his clients, and by failing to take any action to set aside the default judgment, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

36. By failing to timely pay the monetary sanctions pursuant to the court's April 16, 2010 and September 10, 2010 orders, Respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in willful violation of Business and Professions Code, section 6103.

37. By failing to turn over the client file to Gong and Palmieri at any time between March 11, 2011 and August 26, 2011, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): While the default judgment entered against Gong and RFG does not necessarily support a finding that the clients would have prevailed had they had their day in court, Respondent's misconduct caused Gong and RFG to lose their right to defend against the allegations of Luce and caused them to lose their right to prosecute their cause of action against Luce.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent's misconduct involved three separate ethical violations.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline:

Although the misconduct is serious, Respondent has been an attorney in California since 1979 and has no prior record of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the Review Department recognized that although Standard 1.2(e) describes specific instances of mitigation, it is by no means an exclusive list, and the Supreme Court and the Review Department have both considered an absence of a prior record of discipline in mitigation even where the misconduct is serious. In *Riordan*, the Review Department credited an attorney with significant mitigation for serious misconduct where the attorney had practiced discipline-free for more than seventeen years.

Pre-Trial Stipulation:

Respondent is entitled to some mitigation for entering into this stipulation prior to trial, thereby saving the State Bar and the State Bar Court resources in having to litigate this case. The weight of the mitigation is somewhat lessened because Respondent did not enter into the stipulation until shortly before trial in this matter, the facts are easily provable, and because Respondent did not immediately turn over the client file to Gong and his new attorney. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1077, 1079 [where mitigation credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed 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.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing three acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.6, which applies to Respondent’s violation of Business and Professions Code, section 6103.

Standard 2.6 provides for, “disbarment or suspension depending upon 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.” The gravity of the offense in this case was extensive and involved multiple acts of misconduct. Respondent’s conduct harmed his clients, Gong and RFG, in that they lost their right to litigate their case, irrespective of what the outcome would have been. Therefore, some period of actual suspension is necessary to satisfy the purposes of discipline set forth in standard 1.3 even though Respondent has been an attorney since 1979 with no prior discipline, and even though Respondent has entered into this stipulation, thereby saving the State Bar and the State Bar Court time and resources. Given Respondent’s lengthy period of discipline-free practice, a one-year stayed suspension with two years’ probation with conditions including a thirty-day actual suspension is the appropriate level of discipline to satisfy the purposes of discipline set forth in standard 1.3.

Case law also supports imposition of a thirty-day actual suspension in this matter. In *Layton v. State Bar* (1990) 50 Cal.3d 889, an attorney who had been practicing law for more than thirty years received a three-year stayed suspension, three years of probation and 30 days actual suspension. The attorney served as both the executor and attorney of an estate. The attorney failed to perform his duties competently over a five-year period. Specifically, he neglected his duties to conserve assets and failed to file an accounting for more than five years. The primary beneficiary successfully petitioned to have the attorney removed and had another attorney complete the work. In aggravation, the attorney's delay harmed the primary beneficiary. The Court also adopted the Review Department's finding that the attorney's cooperation with the State Bar was undercut by his contradictory and incredible explanations for failing to perform, and the Court noted the attorney's indifference toward rectification or atonement. The attorney received substantial mitigation for his more than 30 years without discipline, but he still received an actual suspension.

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>
11-O-16372-RAH	Two	Business and Prof. Code section 6068(m)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 14, 2013, the prosecution costs in this matter are approximately \$5,338.00. 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.

EXCLUSION FROM MCLE CREDIT

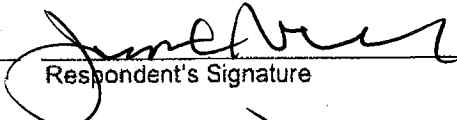

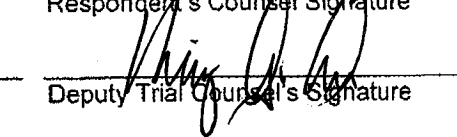
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School to be ordered as a condition of reproof or suspension]. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: James Connolly Mitchell	Case number(s): 11-O-16372-RAH
--	-----------------------------------

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>May 22, 2013</u> Date	 Respondent's Signature	<u>James C Mitchell</u> Print Name
<u>May 22, 2013</u> Date	 Respondent's Counsel Signature	<u>SUSAN MARGOLIS</u> Print Name
<u>5/22/13</u> Date	 Deputy Trial Counsel's Signature	<u>KIMBERLY G. ANDERSON</u> Print Name

(Do not write above this line.)

In the Matter of: James Connolly Mitchell	Case Number(s): 11-O-16372-RAH
--	-----------------------------------


ACTUAL SUSPENSION 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 5.58(E) & (F), 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.)**

5/24/13
Date


DONALD F. MILES
Judge of the State Bar Court

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 Los Angeles, on May 24, 2013, 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:

**SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

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

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 24, 2013.



Paul Barona
Case Administrator
State Bar Court