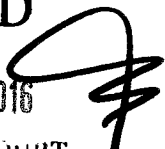


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ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

| | | |
|---|--|--|
| <p>Counsel For The State Bar</p> <p>Kimberly G. Anderson Senior Trial Counsel, Bar # 150359 Jamie Kim Deputy Trial Counsel, Bar # 281574 The State Bar of California 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1083</p> <p>Bar # 150359</p> | <p>Case Number(s): 11-O-18428-YDR 12-O-11552-YDR 13-O-13158-YDR 13-O-16281-YDR</p> | <p>For Court use only</p> <p>FILED</p> <p>JUL 12 2016</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>  |
| <p>Counsel For Respondent</p> <p>Kevin H. Park Bremer, Whyte, Brown & O'Meara 21271 Burbank Blvd., Ste. 110 Woodland Hills, CA 91367 (818) 712-9800</p> <p>Bar # 96562</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of: WILLIAM STEPHEN TOMASI</p> <p>Bar # 139518</p> <p>A Member of the State Bar of California (Respondent)</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 **December 27, 1988**.
- (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 **18** pages, not including the order.

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- (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: **Costs to be paid in equal amounts prior to February, for the first three (3) billing cycles following the effective date of the Supreme Court order.** (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (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) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Stipulation Attachment at page 14.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony

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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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (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 extraordinarily 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:

Pretrial Stipulation - See Stipulation Attachment at page 14.

Extreme Physical and Mental Difficulties and Disabilities - See Stipulation Attachment at pages 14-15.

No Prior Discipline - See Stipulation Attachment at page 15.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **five (5) years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **five (5) 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 **three (3) years**.

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- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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.
- (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:

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 during the period of actual suspension or within one year, whichever period is longer. **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 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:** Respondent will be deemed to have satisfied his Ethics School probation condition as set forth in paragraph E, subsection (8), page 5, by providing to the Office of Probation satisfactory proof of having attended a session of Ethics School and having passed the test at the end of that session, subsequent to the filing of this Stipulation, but prior to the effective date of the Supreme Court order imposing discipline herein. Respondent also will be deemed to have satisfied the condition that he pass the Multistate Professional Responsibility Examination (MPRE), as required in paragraph F, subsection (1), page 6, by showing proof of passage of the MPRE administered subsequent to the filing of this Stipulation, but prior to the effective date of the Supreme Court order imposing discipline herein.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WILLIAM STEPHEN TOMASI

CASE NUMBERS: 11-O-18428-YDR, 12-O-11552-YDR, 13-O-13158-YDR and
 13-O-16281-YDR

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-18428-YDR (State Bar Investigation)

FACTS:

1. In 1999, Douglas DeNoce ("DeNoce") created an irrevocable trust ("the trust") for the benefit of his daughter, Savannah DeNoce ("Savannah"), who was at all relevant times a minor and the sole beneficiary of the trust.

2. Between 2002 and October 2007, Respondent and DeNoce, who at all relevant times was and is a disbarred attorney, had a business relationship and an attorney-client relationship.

3. In 2004, DeNoce asked Respondent to serve as trustee of the trust and Respondent agreed to do so. At the time, the trust consisted of two pieces of real property that were free and clear of any encumbrances or mortgages: 1246 Patricia Avenue, Unit 19, Simi Valley, CA ("the Simi Valley property") and 4182 Lake Harbor Lane, Westlake Village, CA.

4. On October 21, 2004, Respondent transferred title of the Simi Valley property (which belonged to the trust) to himself.

5. On January 5, 2005, Respondent encumbered the Simi Valley property using it as collateral for a \$60,000 personal loan. The loan was not for the benefit of Savannah or the trust.

6. Respondent used \$13,663 of the \$60,000 loan proceeds to pay Respondent's personal consumer debt.

7. Part of the \$60,000 loan proceeds was also used by Respondent to finance the sale of Respondent's Porsche 911 Carrera to DeNoce.

8. On October 31, 2007, Respondent was replaced as trustee of the trust on October 31, 2007.

9. On October 31, 2007, Respondent was replaced as trustee of the trust by attorney Stanley Hilton ("Hilton"). On October 31, 2007, Hilton sent a letter to Respondent demanding, among other things, that Respondent return title of the Simi Valley property to the trust, that he remove the

... on the Simi Valley property, and that Respondent provide an accounting for the \$60,000 proceeds. Respondent received the letter, but did not respond to it.

10. On December 27, 2007, Hilton sent a second letter to Respondent demanding that he return title to the Simi Valley property to the trust and that he remove the encumbrance. Respondent received the letter.

11. On January 2, 2008, Respondent promised to provide an accounting to Hilton for all trust funds, but he did not provide an accounting.

12. On June 4, 2008, Hilton filed a lawsuit on behalf of both DeNoce and the trust in the case entitled *The Savannah N. DeNoce Trust et. al. v. William Stephen Tomasi, et. al.*, Los Angeles Superior Court Case No. BC392034 ("the breach of fiduciary duty case"). In the breach of fiduciary duty case, the trust again demanded, among other things, an accounting for all trust funds. Respondent had actual knowledge of the trust's demand for accounting, and the lawsuit.

13. On December 4, 2008, attorney Julia Berkus ("Berkus") appeared as separate counsel on behalf of the trust in the breach of fiduciary duty case. On January 13, 2009, Berkus sent a letter to Kevin Park ("Park"), the Respondent's attorney in the breach of fiduciary duty case, demanding an accounting for the \$60,000 loan proceeds, and demanding that Respondent return title of the Simi Valley property to the trust and that Respondent remove the encumbrance. Respondent had actual knowledge that the trust continued to demand an accounting regarding the loan proceeds.

14. On September 18, 2009, the court issued an order granting summary adjudication in favor of the trust and against Respondent in the breach of fiduciary duty case finding that Respondent breached some of his fiduciary duties as trustee of the trust. The court entered judgment in favor of the trust and against Respondent in the amount of \$478,000, plus costs. Respondent received notice of the court's order.

15. On September 30, 2009, and only after the court issued its order granting summary adjudication in favor of the trust, Respondent deeded the Simi Valley property back to the trust.

16. Although Respondent failed to provide a full and complete accounting to Hilton, the trust and successor trustees for the \$60,000 loan proceeds he obtained, Respondent did ultimately pay the loan off in full on November 17, 2009 after making all timely payments.

17. At all relevant times, Respondent, as trustee of the Trust, owed the following fiduciary duties to the trust and to Savannah: Respondent owed a fiduciary duty to act in the best interests of the Trust and not to act to use trust property for his own benefit. Respondent owed a fiduciary duty to account for the Trust property to the successor trustee. Respondent owed a fiduciary duty to return the Simi Valley property to the Trust and to remove the encumbrance on the property immediately upon demand of the successor trustee. Respondent breached each of these fiduciary duties to the Trust and to Savannah intentionally.

18. On September 29, 2009, Respondent recorded two grant deeds assigning interests in the following two properties to his brother Phillip Tomasi and his father-in-law Jack Grasso: 1136 Del Verde Court, Thousand Oaks, CA ("the Thousand Oaks property") and 3145 Old Conejo Road, Newbury Park, CA ("the Newbury Park property"). The grant deeds for the Thousand Oaks and Newbury Park properties were not actually notarized, nor were the grant deeds recorded until September

29, 2009 (six months later and just 11 days after the summary adjudication order was issued.) The deeds were executed without consideration. Respondent transferred his interests in the two properties with the fraudulent intent of avoiding payment of the \$478,000 judgment in the breach of fiduciary duty case.

19. On October 29, 2009, the court entered a judgment against Respondent in the breach of fiduciary duty case in the amount of \$478,000, plus costs, affirming its September 18, 2009 order granting summary adjudication. Respondent received notice of the judgment on October 29, 2009. On November 6, 2009 an Abstract of Judgment was recorded in Los Angeles.

20. On April 23, 2010, Stanley Hilton filed a lawsuit on behalf of the trust and against Respondent, Florence Tomasi, Jack Grasso, and Phillip Tomasi to set aside the fraudulent transfers in the case entitled *Stanley Hilton, Trustee, et al v. William Tomasi et al.*, Ventura County Superior Court Case No. 56-2010-00372285 (“the fraudulent transfer case”).

21. On May 23, 2010, Respondent and his wife Florence Tomasi filed a petition for bankruptcy, which had the effect of staying the fraudulent transfer case against them.

22. On June 3, 2010, Jack Grasso and Phillip Tomasi executed Grant Deeds transferring back to Respondent’s interests in the Thousand Oaks and Newbury Park properties.

23. The fraudulent transfer case proceeded to trial and Respondent was present and testified at the trial. During the trial, the court did find that Respondent kept his status as a party even though the action could not legally proceed against him due to the bankruptcy petition. Following the trial, the court found:

Absent the automatic bankruptcy stay, the court indicated it would have entered judgment for the Trust and against defendant William Tomasi in the amount of \$45,333.00. The Court noted that determination would, however, be left to another day, and dependent upon the outcome of Respondent’s bankruptcy case. The Court entered Judgment in the favor of Jack Grasso, Philip Tomasi and Deanne Tomasi finding that they did not knowingly participate in the fraudulent transfer.

However, as to Respondent, the court found:

With regard to William Tomasi, the court additionally finds that his conduct was fraudulent. There can be no other conclusion that can be reached other than his intention was to put his interest in the Del Verde and Old Conejo Road properties beyond the reach of a creditor. This was intentionally done, and is demonstrated by clear and convincing evidence. That, however, is a moot point at this stage, due to the operation of the bankruptcy stay.

24. On August 15, 2013, the Bankruptcy Court granted a summary judgment in favor of the Trust and against Respondent, preventing Respondent from discharging debts in bankruptcy due to his defalcation of funds while acting in a fiduciary capacity.

CONCLUSIONS OF LAW:

25. By breaching his fiduciary duties to the trust and to Savannah intentionally, by transferring title to the Simi Valley property from the trust to himself, by using the Simi Valley property as collateral for a personal loan to himself in the amount of \$60,000, by failing to return the Simi Valley property to the trust between October 31, 2007 and September 30, 2009, and by failing to fully account to the trust for the \$60,000 loan proceeds between October 31, 2007 and the present, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

26. Respondent violated California Probate Code, section 16002 when he transferred the Simi Valley property from the trust to himself and encumbered the property by way of a \$60,000 personal loan to himself because the transaction was not in the best interests of the trust. By violating California Probate Code, section 16002 when he transferred the Simi Valley property from the trust to himself and encumbered the property by way of a \$60,000 personal loan to himself, Respondent failed to support the Constitution and laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

27. Respondent violated California Probate Code, section 16004 when he transferred the Simi Valley property from the trust to himself and encumbered the property by way of a \$60,000 personal loan to himself because Respondent used the trust for his own benefit. By violating California Probate Code, section 16004 when he transferred the Simi Valley property from the trust to himself and encumbered the property by way of a \$60,000 personal loan to himself, Respondent failed to support the Constitution and laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

28. Respondent violated California Probate Code, section 16062 by failing to render an accounting of trust property. By violating California Probate Code, section 16062, Respondent failed to support the Constitution and laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

29. By transferring his interests in the Newbury Park and Thousand Oaks properties to his brother and father in law with the fraudulent purpose of preventing the properties from being used to satisfy the judgment in the breach of fiduciary duty case, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

Case No. 12-O-11552-YDR (Complainant: Douglas DeNoce)

FACTS:

30. Between 2002 and October 2007, Respondent and DeNoce, who at all relevant times was and is a disbarred attorney, had a business relationship and an attorney-client relationship. Between in or about 2002 and in or about October 2007, Respondent represented DeNoce in the following seven misdemeanor criminal cases: Los Angeles Superior Court Case Nos. 2MA01998, 3MA00080, 3MA00510, 6MB0095401, 4SF06988 and 4VN04822 and Ventura Superior Court Case Nos. 2005006279. During the course of his representation of DeNoce, Respondent maintained client files in each of DeNoce's criminal cases.

31. At all relevant times, DeNoce was a disbarred lawyer who was not entitled to practice law in the State of California and at all relevant times alleged herein, Respondent had actual knowledge that DeNoce was a disbarred lawyer who was not entitled to practice law in the State of California.

32. Between 2002 and October 2007, Respondent employed DeNoce to perform legal work on civil cases in his office under his supervision. DeNoce prepared pleadings, complaints, answers, handled civil discovery, motions, and subpoenas.

33. Between 2002 and October 2007, Respondent and DeNoce entered into an oral agreement that DeNoce would perform work on civil cases where Respondent charged the client a contingent fee, and that Respondent would split the contingent fees on those cases, with 60% to Respondent and 40% to DeNoce. Respondent and DeNoce specifically entered into an oral agreement to split fees in the following cases:

- Respondent settled a case entitled *Sablick v. Take Five* for a client for \$45,000. Respondent took \$15,000 as his contingent fees on the case, and on August 17, 2006, he paid DeNoce \$4,037, which represented DeNoce's 40% share of the settlement, less \$1,963, Respondent had previously advanced to DeNoce.
- Respondent also agreed to pay DeNoce 40% of Respondent's contingent fee for his work on a case entitled *Gerken v. Durham Transportation*. On or about October 19, 2007, Respondent paid DeNoce \$21,000 of his portion of the fees in the Gerken case, which was 20% of his portion of the contingent fee as opposed to 40% of his portion of the contingent fee. Respondent stated that he was paying DeNoce 20% of his fee instead of 40% of his fee, on the rationale that DeNoce had stopped working on the Gerken case before all services had been completed.

34. Prior to employing DeNoce, Respondent did not notify the State Bar in writing of his employment of DeNoce to perform legal services for his clients. Respondent did not notify the State Bar of his employment of DeNoce to perform legal services for his clients at any time between 2003 and October 2007.

35. On October 31, 2007, attorney Hilton sent a letter to Respondent demanding that he return the client files to DeNoce. Respondent received the letter.

36. To date, Respondent has not returned the client files to DeNoce.

CONCLUSIONS OF LAW:

37. By entering into an oral agreement to split contingent fees with DeNoce, a disbarred attorney, Respondent shared legal fees with a person who is not a lawyer in willful violation of Rule 1-320(A) of the Rules of Professional Conduct.

38. By failing to provide the State Bar with written notification of his employment of disbarred attorney DeNoce prior to his employment of DeNoce, Respondent employed, associated professionally with, or aided a person that Respondent knew was a disbarred member to engage in activities which constitute the practice of law in violation of Rule 1-311(D) of the Rules of Professional Conduct.

39. By failing to return DeNoce's client files to DeNoce between October 31, 2007 and the present, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all of the client's papers and property in willful violation of Rule 3-700(D)(1) of the Rules of Professional Conduct.

Case No. 13-O-13158 (Complainant: Jonathan Layman)

FACTS:

40. In October 2011, Jonathan Layman ("Layman") hired Respondent to represent him in a criminal case, Ventura County Superior Court Case Nos. 2011035223FA (first DUI). Mr. Layman worked with Respondent's daughter, Jacqueline, at Jos. A. Banks Clothiers, Inc. in Simi Valley, and was personally acquainted with Respondent's wife, Jackie, who worked as a bondsman. Through them, he became acquainted with Respondent. Mr. Layman hired Respondent following Mr. Layman's arrest on October 3, 2011 and the filing of charges in Ventura County Superior Court under case number 2011035223 relating to felony driving under the influence with priors and battery upon a peace officer. Respondent agreed to represent Layman for \$7,500 and until the completion of the case, unless there was to be a court or jury trial, at which time additional fees would be charged. Between October 2011 and September 2012, Respondent received \$7,500 from Mr. Layman. Some of these payments were made with cash.

41. On October 12, 2011, Respondent drove Mr. Layman to the sheriff's department to obtain the release of Mr. Layman's Jeep, which had been impounded. Respondent paid the release and storage fees for Mr. Layman's Jeep. After leaving the impound lot, Respondent followed Mr. Layman, who drove his Jeep to his place of employment. Upon arrival, Respondent took the keys to Mr. Layman's Jeep and told him that he would not need his vehicle. In doing so, Respondent acquired an adverse interest against his client, based on terms that were not fair or reasonable to the client. On October 12, 2011, Layman signed a document entitled "Bill of Sale," which states that Layman would sign over title to his 2006 Wrangler Jeep Rubicon, license plate number 5REDSOX, as part of the retainer agreement between attorney, Respondent, and client, Mr. Layman. The Bill of Sale contradicts Respondent's assertion that his purported purchase of Mr. Layman's Jeep was not in partial satisfaction of his fees for legal services. Respondent did not advise Mr. Layman to seek legal advice with an independent attorney prior to him taking the keys to Mr. Layman's vehicle or Mr. Layman signing over his automobile.

42. On May 28, 2012, Mr. Layman was arrested and charged with a second DUI in Ventura County Superior Court case number 2012019479 (second DUI). Respondent appeared and represented Mr. Layman at his arraignment on this second DUI and at subsequent hearings held on the following dates: June 28, 2012, July 20, 2012, August 15, 2012, August 30, 2012, and September 27, 2012.

43. On October 12, 2012, Layman was arrested and charged with a third DUI in Ventura County Superior Court, case number 2012036840 (third DUI). Respondent appeared and represented Mr. Layman at his arraignment on this third DUI matter and at subsequent hearings held on the following dates: October 16, 2012, October 25, 2012, and November 2, 2012.

44. On November 19, 2012, Respondent failed to appear at the continued sentencing hearings in the first DUI and second DUI cases, and failed to appear at any continued hearing dates held by the court thereafter. On November 26, 2012, Respondent was admitted to Los Robles Hospital and Medical Center after suffering a stroke. Respondent did not advise Mr. Layman or Linda Layman, Mr. Layman's mother, of his hospitalization at any time.

45. On December 19, 2012, Ms. Layman paid Respondent \$400 by personal check number 3048, on behalf of Mr. Layman, as partial payment of Respondent's legal fee. At no time did Respondent obtain Mr. Layman's informed written consent to accept fees from a third party, including Ms. Layman.

46. On January 11, 2013, an attorney by the last name of Salas appeared on Respondent's behalf in all three of Mr. Layman's cases and continued sentencing to February 13, 2013 in all three matters. Ms. Layman was present at the January 11, 2013 hearing and learned at that time that Respondent had suffered a stroke in November 2012. Respondent did not seek leave of the court to be relieved as Mr. Layman's attorney of record at any time following his discharge from the hospital. Neither Respondent, nor any appearance attorney acting on his behalf, appeared at Mr. Layman's February 13, 2013 hearing or at any subsequent hearing in any of Mr. Layman's three matters.

47. On March 9, 2013, Respondent's wife responded to a text message from Ms. Layman, in which Ms. Layman was advised that Mr. Layman should be represented by a public defender at the next scheduled hearing if he was unable to obtain continuances in his matters. On May 24, 2013, Ms. Layman hired a new attorney to represent Mr. Layman. On June 3, 2013, Respondent was relieved as Mr. Layman's attorney of record and a new attorney substituted into Mr. Layman's cases. To date, Respondent has not provided an accounting or refund of unearned fees to Mr. Layman or Ms. Layman.

CONCLUSIONS OF LAW:

48. By failing to disclose the terms of the acquisition of the interest adverse to a client, Mr. Layman, in writing and in a manner reasonably understood by the client, by failing to advise the client in writing to seek advice of an independent lawyer of the client's choice, and failing to give the client a reasonable opportunity to seek such advice, Respondent willfully violated Rule 3-300 of the Rules of Professional Conduct.

49. By receiving advanced legal fees for legal services to be performed on behalf of a client, Mr. Layman, and by failing to render an appropriate accounting to the client regarding those funds following termination of Respondent's employment in or about January 2013, Respondent willfully violated Rule 4-100(B)(3) of the Rules of Professional Conduct.

50. By failing to take any action on or after January 11, 2013 on behalf of a client, Mr. Layman, for whom Respondent had been hired to perform legal services, without permission from the tribunal in which the client's proceedings were being heard, Respondent effectively withdrew from employment in willful violation of Rule 3-700(A)(1) of the Rules of Professional Conduct.

Case No. 13-O-16281-YDR (Complainant: Isabella Watkins)

FACTS:

51. On November 8, 2012, Isabella Watkins ("Watkins") met with and hired Respondent to represent her in her criminal case, filed in Ventura County Superior Court under case number 2012034683MA, in which she was charged for driving under the influence on September 26, 2012. Respondent charged Ms. Watkins \$2,500 for the representation, and Ms. Watkins paid one-half of his fees, \$1,250, by personal check on November 8, 2012. On November 16, 2012, Ms. Watkins paid Respondent the remaining balance of his fees, \$1,250, by personal check.

52. Respondent did not appear at the scheduled hearing on November 28, 2012 in Ms. Watkins's case, but an attorney by the name of Quinn appeared for him. Ms. Watkins was not present at the November 28, 2012 hearing and a bench warrant was held for her arrest.

53. In November 2012, Ms. Watkins retained new counsel, Gary W. Faulkes, after learning that Respondent had suffered a stroke and had been hospitalized that month. Respondent was substituted out as Ms. Watkins' attorney of record on December 18, 2012 when Mr. Faulkes made his first appearance in Ms. Watkins' case.

54. On December 18, 2012, Mr. Faulkes sent a letter to Respondent requesting a refund and an accounting. The letter was sent to Respondent via facsimile (at 805-498-4100) and U.S. Mail (at 3145 Old Conejo Road, Newbury Park, CA 91320), which was not returned. Respondent did not respond to the letter and did not provide an accounting or a refund of unearned fees. On January 8, 2013 and February 14, 2013, Mr. Faulkes sent a copy of his December 18, 2012 letter to Respondent via facsimile and U.S. Mail. Respondent received the letter and the emails. Respondent did not respond to the letter or the emails and did not provide an accounting or a refund of unearned fees.

55. By February 2016, Respondent gave Ms. Watkins a full refund of \$2,500 for attorney fees.

CONCLUSIONS OF LAW:

56. By receiving advanced legal fees from a client, Ms. Watkins, for legal services to be performed on the client's behalf, and thereafter failing to render an appropriate accounting to the client regarding those funds following termination of Respondent's employment on or about December 17, 2012, Respondent willfully violated Rule 4-100(B)(3) of the Rules of Professional Conduct.

57. By failing to perform any services on behalf of a client, Ms. Watkins, after receiving advanced legal fees for legal services to be performed on the client's behalf, and failing to promptly refund those fees upon termination of Respondent's employment on or about December 17, 2012, Respondent willfully violated Rule 3-700(D)(2) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed thirteen ethical violations in four separate matters.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; In the Matter of Spaitth (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

Extreme Emotional, Physical, or Mental Difficulties and Disabilities: On November 26, 2012, Respondent was admitted to Los Robles Hospital, after having suffered a stroke. Respondent suffered many residual problems as a result of the stroke, which prevented him from completing the

work he was hired to perform on behalf of Jonathan Layman and Isabella Watkins, and which directly led to the misconduct in Cases 13-O-13158-YDR and 13-O-16281-YDR. While Respondent continues to suffer from residual issues relating to his stroke, Respondent acknowledges that he must not take on client's matters if he is not physically able to do so, and that he must promptly refund unearned fees and account to a client if he is not able to complete work, or is otherwise terminated in the future.

No Prior Discipline: Although the misconduct in Case Nos. 11-O-18428-YDR and 12-O-11552-YDR was extremely serious, Respondent was admitted to the Bar on December 27, 1988 and has no prior record of discipline. (*See, In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when the misconduct at issue was serious.])

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent admits to committing 13 acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

The most severe sanction applicable to respondent's misconduct is found in Standard 2.11, which applies to respondent's violations of Business and Professions Code section 6106.

Standard 2.11 provides that:

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends upon the magnitude of the misconduct, the extent to which the misconduct harmed or misled the victim, which may include the adjudicator, the impact on the administration of justice, if any, and the extent to which the misconduct related to the member's practice of law.

In the instant matter, a three-year actual suspension is an appropriate disposition. Respondent's misconduct, particularly in Case No. 11-O-18428-YDR, was quite serious and involved multiple acts of moral turpitude and dishonesty, including specifically, breaching his duties as trustee of an irrevocable trust and making efforts to fraudulently transfer real property to avoid payment of a judgment. While those acts did not directly relate to the Respondent's law practice, they were still quite serious and they occurred over a protracted period of time.

Respondent's misconduct is significantly mitigated by respondent's 15 years of discipline free practice at the time of the misconduct. Respondent's misconduct in the Layman and Watkins matters were in large part caused by respondent's stroke, which he suffered in November 2012. Respondent had no discipline prior to the illegal relationship with DeNoce. Respondent's misconduct is also mitigated by his entry into a pretrial stipulation. Therefore, disbarment is not required in these matters to serve the purposes of discipline. In addition, while there was harm to the Trust in having the Simi Valley property encumbered for a period of time, there was not irreparable harm to the Trust as Respondent ultimately returned the property and paid off the \$60,000 loan in full. The Trust has also obtained a civil judgment against respondent. There was also some harm to Watkins who was deprived of her funds when respondent failed to promptly refund her unearned fees, but that harm cannot be said to be substantial and respondent ultimately refunded the unearned fees.

Case law supports this level of discipline. In the case of *In the Matter of Jones*, (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, an attorney who had only been in practice for three years, was suspended for two years and until for violations similar to those in this matter. The attorney failed to supervise a non-attorney business partner with whom he had an agreement to split fees. The attorney allowed his non-attorney business partner free reign to run a large scale law office and engage in the unauthorized practice of law. The non-attorney then engaged in capping of fees, forgery and other fraudulent practices. The facts in *Jones* did not involve trustee duties, however it was found that the attorney in *Jones* engaged in an act of moral turpitude by breaching his fiduciary duties in violation of Business and Professions Code section 6106, formed an illegal partnership with a non-attorney and split fees with a non-attorney, in addition to other misconduct. The attorney's eventual decision to report his business partner to law enforcement was found to be somewhat mitigating, as was his pro bono work.

Here, Respondent's misconduct is similar to, but more serious than the attorney's misconduct in *Jones*. Respondent too breached fiduciary duties, albeit in the context of a trust, split fees with a non-attorney, and employed a non-attorney. Respondent's misconduct is more severe than that in *Jones* as it also involved failure to comply with laws in violation of Business and Professions Code section 6068(a), an attempt to conceal assets to avoid collection of a judgment, and performance violations in three client matters, DeNoce, Layman, and Watkins. This included Respondent's acquisition of interests adverse to his client, in the retention of Jonathan Layman's Jeep without proper written disclosure and consent. Based on the greater severity and breadth of Respondent's misconduct than that in *Jones*, a three year

actual suspension with a Standard 1.2(c)(1) condition is adequate to protect the public. (*Maltaman v. State Bar* (1989) 43 Cal.3d 924, 958 [absence of prior record of discipline and absence of evidence that sanction short of disbarment is inadequate to deter future misconduct and protect the public supported discipline less than disbarment].)

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-18428-YDR | Four | Business and Professions Code section 6068(a) |
| 11-O-18428-YDR | Five | Business and Professions Code section 6068(a) |
| 11-O-18428-YDR | Seven | Business and Professions Code section 6068(a) |
| 11-O-18428-YDR | Nine | Business and Professions Code section 6068(o)(2) |

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of July 6, 2016, the prosecution costs in this matter are approximately \$12,644.32. 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 MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) 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:
WILLIAM STEPHEN TOMASI

Case number(s):
11-O-18428-YDR
12-O-11552-YDR
13-O-13158-YDR
13-O-16281-YDR

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>7/6/16</u> Date | <u>WST</u> Respondent's Signature | <u>William Stephen Tomasi</u> Print Name |
| <u>7/6/16</u> Date | <u>Kevin H. Park</u> Respondent's Counsel Signature | <u>Kevin Park</u> Print Name |
| <u>7/6/16</u> Date | <u>Kimberly Anderson</u> Deputy Trial Counsel's Signature | <u>Kimberly Anderson</u> Print Name |

(Do not write above this line.)

| | |
|---|---|
| In the Matter of: WILLIAM STEPHEN TOMASI | Case Number(s): 11-O-18428-YDR 12-O-11552-YDR 13-O-13158-YDR 13-O-16281-YDR |
|---|---|


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.)**

7/8/16
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 July 12, 2016, 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:

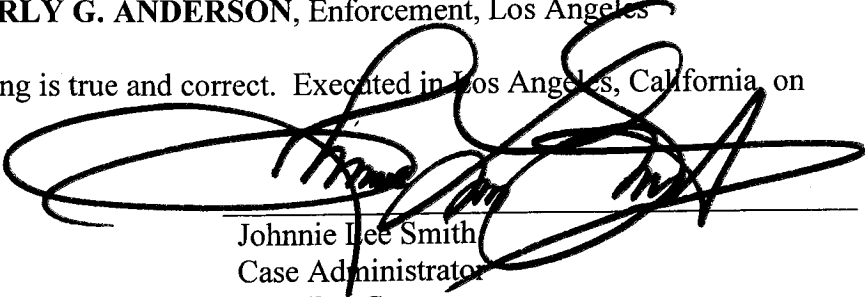
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KEVIN HUNTER PARK
BREMER, WHYTE, BROWN & O'MEARA
21271 BURBANK BLVD STE 110
WOODLAND HILLS, CA 91367**

- 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 July 12, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court