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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Anand Kumar Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1714 Bar # 261592	Case Number(s): 12-O-12324-DFM	For Court use only <div style="text-align: center;"> <p>FILED</p> <p>MAY 14 2013 </p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>
In Pro Per Respondent Stephen Francis Guiner 404 E. Las Tunas Drive, #202 San Gabriel, CA 91776 (626) 287-2200 Bar # 44495	<p>PUBLIC MATTER</p>	
In the Matter of: Stephen Francis Guiner Bar # 44495 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING 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 27, 1969.
- (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 16 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



- (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: 2015, 2016 and 2017. (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 98-O-03437 (Supreme Court case number S117547).
 - (b) Date prior discipline effective October 31, 2003.
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A) [failures to perform], Rules of Professional Conduct and Business and Professions Code, sections 6068(m) [failure to inform clients of significant developments], 6106 [moral turpitude for misrepresentation to clients] and 6103 [failure to obey court order].
 - (d) Degree of prior discipline : Respondent was suspended for six months and until he showed proof of rehabilitation under standard 1.4(c)(ii), execution of such suspension was stayed, and Respondent was placed on a two-year probation with conditions.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

In State Bar case number 03-O-01018 (Supreme Court case number S135352), Respondent was suspended for six months, execution of the suspension was stayed, and he was placed on a one-year probation for a violation of rule 3-110(A), Rules of Professional Conduct [failure to perform]. The discipline became effective on October 15, 2005.

For further discussion of Respondent's prior of discipline, see stipulation, at page 10.
- (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, at page 10.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See stipulation, at page 11.
- (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, 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.

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- (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. See stipulation, at page 11.
- (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:

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two (2) years.
- 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 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:

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.
- (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:**

MEDICAL CONDITIONS:

In the course of the instant disciplinary proceedings, Respondent has presented medical evidence to show that he was suffering from a major depressive disorder between December 2008 and January 2013, which impaired Respondent's ability to practice law. The depressive disorder caused severe feelings of depression, loss of energy, anxiety, loss of vitality, difficulties with concentration, social withdrawal and insomnia. During this period, Respondent's condition went undiagnosed until January 2012, when he was first diagnosed with a major depressive disorder by his psychiatrist, Dr. Joanne D. Als, and began receiving psychiatric treatment at Kaiser Permanente. Respondent has had 26 therapy sessions since January 2012 and he is now in remission with the assistance of prescribed medication according to Respondent's medical records and the expert testimony in the sworn written statement of one of Respondent's treating psychiatrists, Dr. Alan B. Karne. Accordingly, as part of the instant discipline, Respondent must comply with the following medical conditions.

Respondent must continue therapy and treatment from a duly licensed psychiatrist, psychologist, or clinical social worker ("therapist") at Respondent's own expense at least two (2) times per month throughout his probationary period or until Respondent's treating therapist consents to a lesser frequency, or until a motion to modify this condition is granted and that ruling becomes final. Respondent must also comply with all recommendations of his treating therapist.

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Respondent must provide to the Office of Probation with each quarterly probationary report a verification from his treating therapist that Respondent is continuing treatment and is complying with all recommendations of his treating therapist. The verification must specify the dates on which Respondent sought treatment during the quarterly period. Should Respondent not provide such a report or should the report indicate that Respondent is not complying with his treatment as recommended by his therapist, Respondent will be in violation of this condition.

Upon request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to Respondent's medical records relating to his treatment with his therapist throughout the duration of the probationary period for the purposes of determining compliance with this condition.

5. On August 8, 2009, Church and James sent Respondent an email asking about the progress on the transfer of title to the property, avoidance of the property taxes and reduction of the Medi-Cal bill. Respondent received the email.
6. On August 10, 2009, Respondent sent Church and James an email apologizing for his lack of communication and citing computer problems for his failure to perform the work. Respondent informed Church and James that he would write to the Department of Health Care Services ("DHCS") to resolve the Medi-Cal bill issue shortly.
7. On March 26, 2010, Medi-Cal sent Church a letter indicating that the estate owed a debt of \$134,095.59 including \$123,213.95 for the original bill and \$10,881.64 accrued in interest.
8. On April 9, 2010, Church sent Respondent an email requesting Respondent's immediate action with regarding to negotiating the Medi-Cal bill. Respondent received the email.
9. On July 18, 2010, Church sent Respondent another email detailing Respondent's failure to perform with regard to the negotiation of the Medi-Cal bill. Respondent received the email. On July 20, 2010, Respondent responded to the email stating he had failed to complete the work because he was attending to other client matters.
10. On September 21 2010, Respondent filed the claim for the reassessment exclusion with the Los Angeles County Assessor's Office, the last day permitted for filing. On October 8, 2010, the County Assessor's Office granted the exclusion.
11. Between October 8, 2010 and December 2011, Respondent made numerous representations to James that he would contact DHCS and present James' reasons for reduction of the Medi-Cal bill, but failed to do so.
12. Between January 2012 and February 2012, James left several voice messages for Respondent, and on February 21, 2012, James requested his file back from Respondent effectively terminating Respondent's services. Respondent received the messages, but Respondent failed to return James' client file to him until March 22, 2013, only after James had complained to the State Bar. On April 9, 2013, Respondent belatedly provided James with an accounting of the services rendered on James' behalf.
13. On March 20, 2012, the State Bar opened a disciplinary investigation identified as case number 12-O-12324 concerning a complaint submitted by James against Respondent.
14. On July 13, 2012, a State Bar Investigator sent a letter to Respondent at his membership records address requesting Respondent to respond in writing to the allegations in James' complaint by July 27, 2012. Respondent received the letter.
15. On July 30, 2012, Respondent requested an extension, which was granted, to respond by August 10, 2012.
16. Respondent failed to provide a written response to the allegations raised by James complaint by August 10, 2012 or at any time during the disciplinary investigation and failed to otherwise cooperate in any way in the State Bar's investigation.

CONCLUSIONS OF LAW:

17. By failing to promptly file the reassessment exclusion with the County Assessor's Office and failing to contact DHCS to reduce the Medi-Cal bill for more than four years after being hired in December 2008, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
18. By failing to return James' client file upon his request until more than a year later on March 22, 2013, 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).
19. By failing to provide an accounting of the legal services he performed on James' behalf until April 9, 2013, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).
20. By failing to provide a written response to the allegations raised by James' complaint by August 10, 2012 or at any time during the disciplinary investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)):

As explained above, Respondent has two prior records of discipline. On October 31, 2003, Respondent received a six-month stayed suspension and until he showed proof of rehabilitation under standard 1.4(c)(ii) and was placed on a two-year probation with conditions in Supreme Court case number S117547 (State Bar case no. 98-O-03437). The misconduct in that matter concerned failures to perform for three clients, failures to inform the three clients of significant developments in their matters, engaging in moral turpitude by making misrepresentations to the three clients and violating court orders. This misconduct occurred between May 1997 and May 1998. The Notice of Disciplinary Charges in State Bar case no. 98-O-03437 was filed in July 2002.

On October 15 2005, Respondent received a six-month stayed suspension and a one-year probation in Supreme Court case number S135352 (State Bar case no. 03-O-01018) for failing to perform in a single client matter in approximately February 1999.

Harm (Std. 1.2(b)(iv)):

Respondent's misconduct significantly harmed James because Respondent failed to contact DHCS and his failure to communicate his lack of performance with regard to the Medi-Cal bill during a time-sensitive matter deprived James of the ability to hire new counsel to dissuade DHCS from pursuing its \$123,213.95 Medi-Cal bill and the estimated \$11,000.00 interest described in the bill.

Indifference (Std. 1.2(b)(v)):

Respondent demonstrated indifference toward rectification of and atonement for the consequences of his misconduct under standard 1.2(b)(iv). Respondent's continuing violation of rule 3-700(D)(1) by failing to return James' client file despite the fact it was requested over fourteen months ago and despite the initiation of the State Bar investigation, demonstrates indifference towards rectifying his misconduct with James, the victim of his misconduct.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)):

Respondent's misconduct evidences multiple acts of misconduct under standard 1.2(b)(ii) in that Respondent committed four separate violations of the Rules of Professional Conduct and/or the State Bar Act over a four-year period.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Good Character (Std. 1.2(e)(vi)):

Respondent has submitted several character letters from a widespread sample of the legal and general communities, who are aware of the full extent of his misconduct, attesting to an extraordinary demonstration of his good character and showing his involvement in the community by providing pro bono legal services to the elderly, various neighbors and those who could not otherwise afford legal services. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [performance of civic service and charitable work is entitled to mitigation as evidence of good character under standard 1.2(e)(vi)]; see also *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

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 four 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. While there are four standards implicated by Respondent's multiple acts of misconduct—standards 2.2(b) [failure to account], 2.4(b) [failure to perform in an individual client matter], 2.6 [failure to cooperate with State Bar investigation] and 2.10 [failure to return client file]—the most severe sanction applicable to Respondent's misconduct is found in standard 1.7(b) as a result of Respondent's two prior records of discipline.

Standard 1.7(b) provides that if an attorney has a record of two prior impositions of discipline, then "the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances predominate." Under the current circumstances, there is a compelling justification and reason to deviate from standard 1.7(b) and impose lesser discipline. (See, *In re Silverton, supra*, 36 Cal.4th at p. 92.)

In considering standard 1.7(b), there is a compelling justification and reason to deviate from standard 1.7(b) and impose lesser discipline here, because Respondent's prior misconduct should be analyzed under a *Sklar* analysis. Respondent's misconduct which led to his first prior discipline occurred between May 1997 and April 1998, and his misconduct which led to his second prior discipline occurred in February 1999, before disciplinary charges were filed against Respondent in the first prior disciplinary proceeding in July 2002. "[T]he aggravating factor of a prior discipline is generally diminished if the misconduct underlying it occurred during the same period. [Citations omitted.] Since part of the rationale for considering a prior record of discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation omitted], it is therefore appropriate to consider the fact that the misconduct involved was contemporaneous with the misconduct in the prior case." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 629; see also *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 ["the aggravating force" of prior discipline "is somewhat diluted" when the misconduct in a case occurs before the notice of disciplinary charges in the prior case was served, because the imposition of prior discipline does not carry with it as "full a need for severity" as if the misconduct in the prior matter had occurred after an attorney had been disciplined and had failed to heed the import of that discipline.], citation omitted.)

Accordingly, the effect of Respondent's prior misconduct, while aggravating, should not be aggravating to the same degree as if a respondent had two records of discipline from distinct time periods and therefore standard 1.7(b) should not be applied in this case. Nonetheless, Respondent's misconduct is serious as explained below.

The gravamen of Respondent's misconduct concerns a failure to perform and a failure to return a client file in a single client matter, violations described under standards 2.4(b) and 2.10. Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client. Standard 2.10 provides that culpability of a member of wilful violation of any Rule of Professional Conduct not specified in the standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due

regard to the purposes of imposing discipline set for the Standard 1.3. For purposes of State Bar discipline, for a "wilful" violation of any Rule of Professional Conduct or the State Bar Act, the State Bar need not show that an attorney "intended the consequences of his acts or omissions, it simply requires proof that he intended the act or omission itself." (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.)

The extent of Respondent's misconduct includes failures to perform for James despite assurances to the contrary over a four-year period. As described above, the harm to his client is significant, because James has not received all the legal services he paid for with his \$3,000.00 advance fee payment to Respondent and according to DHCS's letter, the interest from the outstanding Medi-Cal bill continues to accrue. Additionally, Respondent's failure to return the client file to James during a time-sensitive matter so he can hire new counsel has further aggravated the harm caused to James. Accordingly, significant period of actual suspension is appropriate in the current matter.

Considering the aggravating circumstances in the context of the facts and circumstances of Respondent's instant misconduct, to effectuate the primary purposes of attorney discipline under standard 1.3, namely "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession," Respondent's misconduct here warrants a two (2) year stayed suspension, a two (2) year probation with conditions including a one (1) year actual suspension, mandatory fee arbitration with James and continuing medical treatment to ensure he has been rehabilitated from his depressive condition and the instant misconduct.

FEE ARBITRATION CONDITIONS OF PROBATION:

A. Respondent's Duty to Initiate and Participate in Fee Arbitration

Respondent must initiate fee arbitration within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required by the organization conducting the fee arbitration to start the process. The fee arbitration will be for the \$3,000.00 in fees that Thomas James paid Respondent on December 18, 2008. Respondent must not request more fees than have already been paid by, or on behalf of, Thomas James.

Respondent must provide the Office of Probation with a copy of the conformed filing within forty-five (45) days from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.

Respondent must fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the entity conducting the fee arbitration for information.

Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.

B. Disputed Funds Must be Held in Trust by Respondent

Respondent must keep the disputed funds in a separate interest-bearing trust account (not an IOLTA). If Respondent has removed the disputed funds from trust, Respondent must open a separate interest-bearing trust account and deposit the disputed funds into such account within fifteen (15) days from the effective date of discipline. Respondent must provide evidence, e.g. a copy of Respondent's bank statement showing that the disputed funds have been placed in trust within thirty (30) days from the effective date of this matter, and a statement under penalty of perjury that the funds have remained in trust with each of Respondent's quarterly and final reports.

C. Respondent's Duty to Comply with the Arbitration Award

Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

D. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to Thomas James

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$3,000.00 in fees that Thomas James paid Respondent on December 18, 2008, plus interest of 10% per annum from February 21, 2012 within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed Thomas James for all or any portion of the principal amount(s), Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, Respondent will still be liable for interest payments to Thomas James. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Thomas James before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.

E. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering Respondent to pay back the full amount of \$3,000.00 paid to Respondent by Thomas James plus 10% interest from February 21, 2012.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was April 9, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 11, 2013, the prosecution costs in this matter are approximately \$6,944.00. 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. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Stephen Francis Guiner	Case Number(s): 12-O-12324-DFM
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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.

On page 7 of the stipulation, below the second paragraph, is inserted "FEE ARBITRATION: Fee arbitration is included as a condition of probation—see pages 13-15."

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.)**

Date

5/13/13


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 14, 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:

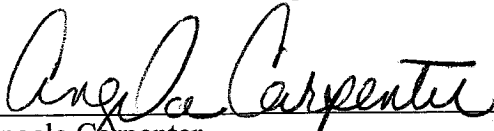
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEPHEN FRANCIS GUINER
404 E. LAS TUNAS DR., #202
SAN GABRIEL, CA 91776 - 1549

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 14, 2013.



Angela Carpenter
Case Administrator
State Bar Court