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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Nada M. Alnajafi 1149 South Hill St. Los Angeles, CA 90015 (213)765-1336</p> <p>Bar # 267621</p>	<p>Case Number(s):</p> <p>12-O-12381 12-O-17962 12-O-16756 12-O-17649</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">FILED</p> <p style="text-align: center;">MAR 27 2013 <i>Mc</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Phillip Kenneth Evans 29991 Canyon Hills Rd. Suite 1709-350 Lake Elsinore, CA 92532 (626) 543-4970</p> <p>Bar # 208336</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Phillip Kenneth Evans</p> <p>Bar # 208336</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

PUBLIC MATTER

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 September 25, 2000.
- (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)

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- 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: two 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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See page 13.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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 page 13.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

See page 13.

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 three (3) 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 six (6) months.
- 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

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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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:**

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In the Matter of: Phillip Kenneth Evans	Case Number(s): 12-O-12381; 12-O-17962; 12-O-16756; 12-O-17649
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Patricia and Bruce Medina	\$500	January 24, 2011;
Patricia and Bruce Medina	\$500	April 2, 2011; and
Patricia and Bruce Medina	\$500	June 1, 2011
Alfie Hernandez	\$900	April 1, 2011
John Rollow	\$650	January 1, 2012
Nalani Albee	\$799	May 11, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than six (6) months prior to the termination of probation.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Phillip Kenneth Evans

CASE NUMBERS: 12-O-12381; 12-O-17962; 12-O-16756; 12-O-17649

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. 12-O-12381 (Complainant: Patricia Medina)

FACTS:

1. On January 18, 2011, Patricia and Bruce Medina ("the Medinas") hired Respondent to negotiate a home mortgage loan modification on their behalf in exchange for a \$1,500 advanced fee.
2. Also on January 18, 2011, the Medinas signed a written Loan Modification Services Agreement provided to them by Respondent. The Loan Modification Services Agreement did not contain a separate statement, in writing, as required by California Civil Code section 2944.6(a), as follows:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

3. On January 24, 2011, the Medinas paid Respondent an initial installment of \$500 towards the \$1,500 advanced fee. By that date, Respondent had not completed each and every service he had contracted to perform, or otherwise represented he would perform, for the Medinas.
4. On April 2, 2011, the Medinas paid Respondent a second installment of \$500 towards the \$1,500 advanced fee. By that date, Respondent had not completed each and every service he had contracted to perform, or otherwise represented he would perform, for the Medinas.
5. On June 1, 2011, the Medinas paid Respondent a third installment of \$500 towards the \$1,500 advanced fee. By that date, Respondent had not completed each and every service he had contracted to perform, or otherwise represented he would perform, for the Medinas.

6. Respondent did not perform any home mortgage loan negotiations on behalf of the Medinas nor did he otherwise perform any legal services of value for the Medinas.
7. Respondent did not earn any portion of the \$1,500 illegal fee paid in advance by the Medinas.
8. To date, Respondent has not refunded any portion of the \$1,500 in unearned fees to the Medinas.

CONCLUSIONS OF LAW:

9. By charging and receiving advanced fees in exchange for agreeing to perform loan modification services in violation of California Civil Code section 2944.7(a)(1), and by negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by the Medinas in advance of any service and thereafter entering into a fee agreement with the Medinas without providing the Medinas, prior to entering into the agreement, the separate statement, in writing, specifically required in California Civil Code section 2944.6(a), Respondent willfully violated Business and Professions Code section 6106.3.
10. By failing to perform any of the services which he was contracted or which he represented to the Medinas that he would perform, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
11. By failing to provide the Medinas a refund of the \$1,500 in unearned fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 12-O-17962 (Complainant: Alfie Hernandez)

FACTS:

12. In April 2011, Alfie Hernandez ("Hernandez") hired Respondent to negotiate a home mortgage loan modification on his behalf in exchange for a \$900 advanced fee.
13. In April 2011, Hernandez paid \$900 to Respondent. At the time Respondent charged and collected the \$900 advanced fee, Respondent had not completed each and every service he had contracted to perform, or otherwise represented he would perform, for Hernandez.
14. To date, Respondent has not refunded any portion of the \$900 in illegal fees to Hernandez.

CONCLUSIONS OF LAW:

15. By charging and receiving advanced fees in exchange for agreeing to perform home mortgage loan modification services in violation of California Civil Code section 2944.7(a)(1), Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 12-O-16756 (Complainant: John Rollow)

FACTS:

16. On March 31, 2011, John Rollow ("Rollow") hired Respondent to file a Chapter 7 bankruptcy on his behalf in exchange for a \$1,499 advanced fee.
17. Between March 31, 2011 and January 2012, Rollow issued nine checks to Respondent, totaling \$1,050, toward the agreed-upon \$1,499 fee. However, three of the checks, totaling \$400, were returned by Respondent's bank because Respondent did not timely cash the checks before they went stale. Therefore, in sum, Respondent received \$650 in advanced fees from Rollow.
18. In January 2012, after receiving the three checks back from the bank, Rollow contacted Respondent to inquire about the status of his bankruptcy petition. Rollow called Respondent but Respondent's phone number was disconnected. Rollow then drove to Respondent's Lake Elsinore office but discovered that Respondent no longer occupied it. Rollow also discovered that Respondent no longer occupied his Rancho Cucamonga office.
19. To date, Respondent has not contacted Rollow.
20. Respondent did not provide notice to Rollow that he was closing or moving his offices. Respondent did not allow Rollow time to employ other counsel. Respondent did not take reasonable steps to avoid reasonably foreseeable prejudice to Rollow's rights.
21. Respondent did not file a Chapter 7 bankruptcy on behalf of Rollow, nor did he otherwise perform any legal services of value for Rollow.
22. Respondent did not earn any portion of the \$650 in advanced fees paid by Rollow. To date, Respondent has not refunded to Rollow any portion of the \$650 in unearned fees.

CONCLUSIONS OF LAW:

23. By not filing a Chapter 7 bankruptcy or otherwise performing any legal services of value for Rollow, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
24. By not responding to Rollow's reasonable status inquiries from January 2012 to present, Respondent failed to respond promptly to Respondent's reasonable status inquiries in willful violation of Business and Professions Code section 6068(m).
25. By failing to provide Rollow a refund of the \$650 in unearned fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).
26. By withdrawing from employment by Rollow without taking reasonable steps to avoid reasonably foreseeable prejudice to Rollow's rights, Respondent failed to properly withdraw from employment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

Case No. 12-O-17649 (Complainant: Nalani Albee)

FACTS:

27. On February 4, 2011, Nalani Albee ("Albee") hired Respondent to file a Chapter 7 bankruptcy on her behalf in exchange for \$799 in advanced fees, to be paid in installments. Between February 4, 2011 and May 11, 2011, Albee made several installment payments to Respondent totaling \$799.
28. From May 31, 2011 to October 2011, Albee emailed Respondent to inquire about the status of her bankruptcy petition. Respondent received Albee's inquiries but did not provide substantive responses to Albee's inquiries.
29. In October 2011, Albee received an email from The Turoci Firm claiming that they were taking over Albee's matter because Respondent was ill. The Turoci Firm requested Albee's signature on a new retainer agreement, and an additional \$500 advanced fee. Albee was not familiar with The Turoci Firm and did not want The Turoci Firm handling her matter.
30. In January 2012, Albee drove to Respondent's Lake Elsinore office and discovered that Respondent no longer occupied the office. Respondent did not provide notice to Rollow that he was closing or moving his offices. Respondent did not allow Rollow time to employ other counsel.
31. Respondent did not file a Chapter 7 bankruptcy on behalf of Albee, nor did he otherwise perform any legal services of value for Albee.
32. Respondent did not earn any portion of the \$799 in advanced fees paid by Albee. To date, Respondent has not refunded to Albee any portion of the \$799 in unearned fees paid.

CONCLUSIONS OF LAW:

33. By not filing a Chapter 7 bankruptcy or otherwise performing any legal services of value for Albee, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
34. By not responding to Albee's reasonable status inquiries from May 31, 2011 to present, Respondent failed to respond promptly to Respondent's reasonable status inquiries in willful violation of Business and Professions Code section 6068(m).
35. By failing to provide Albee a refund of the \$799 in unearned fees, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).
36. By withdrawing from employment by Albee without taking reasonable steps to avoid reasonably foreseeable prejudice to Albee's rights, Respondent failed to properly withdraw from employment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing: Respondent's current misconduct evidences multiple acts of wrongdoing as described above, which have resulted in twelve (12) distinct violations of the Rules of Professional Conduct and Business and Professions Code in four (4) client matters, constituting an aggravating circumstance. (See Standard 1.2(b)(ii); *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

Harm: Respondent's misconduct has caused financial harm to four clients. To date, Respondent has not refunded \$1,500 in illegal fees to the Medinas, \$900 in illegal fees to Hernandez, \$650 in unearned fees to Rollow, or \$799 in unearned fees to Albee. (See Standard 1.2(b)(iv); *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although Respondent's current misconduct is serious, at the time of the misconduct, Respondent had more than twelve (12) years of practice without discipline, which is entitled to mitigation. (See *Edwards v. State Bar* (1990) 52 Cal.3d28, 38-39 [mitigation given to attorney with twelve years of practice without discipline despite serious misconduct].)

Cooperation with State Bar: Additionally, Respondent has cooperated with the State Bar by entering into a stipulated settlement for the matter described herein at an early stage without the need of a trial to resolve this matter. (*Silva-Vidor v. State Bar* (1989) 49 Ca.3d 1071, 1079 [mitigation given where attorney admitted facts and culpability in order to simplify the disciplinary proceedings].)

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 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.) 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 twelve (12) acts of professional misconduct. Standard 1.6(a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions

are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.4(b), which applies to Respondent's violation(s) of Rules of Professional Conduct, rule 3-110(A) for failure to perform services, and Business and Professions Code section 6068(m) for failure to communicate with a client, in the Rollow and Albee matters.

Standard 2.4(b) provides that culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client. Because Respondent abandoned two clients and caused financial harm to four clients, all of whom he still owes restitution to, neither private nor public reproof would be sufficient discipline in this case.

In cases involving client abandonment with no prior discipline, the Supreme Court has held that actual suspension is warranted. (See *Harris v. State Bar* (1990) 51 Cal.3d 1082 [abandoning client, causing client to suffer substantial prejudice, warrants three-year probation with 90 days actual suspension, absent showing of remorse or understanding that neglect is improper]; *Layton v. State Bar* (1990) 50 Cal.3d 889 [failure to perform with competence in connection with handling estate as executor warrants stayed three-year suspension, 30-day actual suspension, and five years of probation]; *Carter v. State Bar* (1988) 44 Cal.3d 1091 [failure to file actions, misrepresentations, refusal to return papers and improper withdrawal from case amounting to moral turpitude warranted six months actual suspension, two-year stayed suspension, and two years probation].)

In *Harris*, the attorney was hired to file and litigate a wrongful death lawsuit. "Except for filing the wrongful death lawsuit and later serving it on [a defendant], both on the last possible day, petitioner did virtually *nothing* for over four years to perform the duties for which she had been retained." (51 Cal.3d at 1088.) Additionally, the attorney repeatedly failed to communicate with her client for four years. The court found serious harm to the client where the attorney's "actions caused the client and his estate monetary loss and prejudiced their causes of action," which settled for much less than its original value due to Respondent's misconduct. In mitigation, the attorney had twenty years of practice without prior discipline and a medical condition. The court disciplined the attorney with 90 days actual suspension.

The misconduct in *Harris* was more egregious than Respondent's misconduct in the Rollow and Albee matters because in those matters there was no actual harm to the clients' legal causes of action, and because Respondent's misconduct only occurred over a one-year span. However, *Harris* involved client abandonment in one client matter whereas Respondent's misconduct involves client abandonment in two client matters and the collection of illegal advanced fees from two other clients. In mitigation, Respondent has twelve (12) years of practice without prior discipline and cooperation with the State Bar by entering into this stipulation at an early stage in the disciplinary process. On the other hand, in aggravation, Respondent has multiple acts of misconduct and still owes restitution to four clients totaling \$3,849.

Accordingly, the appropriate level of discipline here is a six-month actual suspension, with a two-year stayed suspension, and three years of probation with restitution conditions.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 21, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 19, 2012, the prosecution costs in this matter are approximately \$2,865. 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.)

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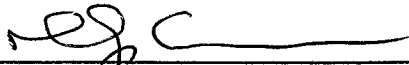
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In the Matter of: Phillip Kenneth Evans	Case number(s): 12-O-12381; 12-O-17962; 12-O-16756; 12-O-17649
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SIGNATURE OF THE PARTIES

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

3/8/13  Phillip Kenneth Evans
Date Respondent's Signature Print Name

3/12/13  Nada M. Alnajafi
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: Phillip Kenneth Evans	Case Number(s): 12-O-12381; 12-O-17962; 12-O-16756; 12-O-17649
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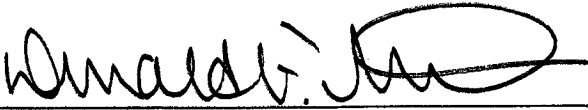
ACTUAL SUSPENSION ORDER

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.

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.)**

3/26/13
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 27, 2013, I deposited a true copy of the following document(s):

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

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:

**PHILLIP K. EVANS
29991 CANYON HILLS RD
STE 1709-350
LAKE ELSINORE, CA 92532**

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 27, 2013.



Tammy Cleaver
Case Administrator
State Bar Court