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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Diane J. Meyers Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1496  Bar # 146643	Case Number(s): 12-O-16029-RAH	For Court use only  <div style="text-align: center;"> <b>FILED</b>          JUL 15 2013          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>
<b>In Pro Per Respondent</b>  John Maurice Ebner 100 Oceangate, Suite 1200 Long Beach, CA 90802 (562) 628-5505  Bar # 100618	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
<b>In the Matter of:</b>  JOHN MAURICE EBNER  Bar # 100618  A Member of the State Bar of California (Respondent)	<b>ACTUAL SUSPENSION</b>  <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 December 1, 1981.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 14 pages, not including the order.

(Effective January 1, 2011)



- (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: the two billing cycles immediately following the effective date of the Supreme Court order in this matter. (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 12-O-13319, 12-O-13320, and 12-O-15652
  - (b) ☒ Date prior discipline effective May 10, 2013
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(m) in three client matters; Rules of Professional Conduct, rules 3-110(A) and 4-100(B)(3) in two client matters; Rules of Professional Conduct, rule 3-700(D)(2) in three client matters; and Business and Professions Code section 6068(i) in one matter
  - (d) ☒ Degree of prior discipline a one-year stayed suspension and a two-year probation
  - (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.
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See Stipulation at p. 9.
- (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. See Stipulation at p. 9.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

See Stipulation at p. 9.

**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 Stipulation at p. 9.

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of two 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 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 90 days.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

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

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- (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: Respondent has been ordered to attend Ethics School and pass the test given at the end of the session attended in connection with the discipline imposed against him in case nos. 12-O-13319, 12-O-13320, and 12-O-15652.
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

(Effective January 1, 2011)

Actual Suspension

- (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: Respondent has been ordered to pass the MPRE in connection with the discipline imposed against him in case nos. 12-O-13319, 12-O-13320, and 12-O-15652.
- (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:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      JOHN MAURICE EBNER

CASE NUMBER:                          12-O-16029-RAH

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-16029 (Complainant: HAC Brummett III)

**FACTS:**

1. In or about December 2008, Brummett employed Respondent on an hourly fee basis to handle legal matters related to his developmentally disabled son who had been placed in a developmental center. Brummett was seeking to have his son live with him.

2. Between December 22, 2008 and April 18, 2012, Brummett paid Respondent a total of \$16,200 to Respondent as fees for the representation.

3. In May 2012, Brummett asked Respondent for a billing statement for the \$16,200 paid Respondent. Prior to May 2012, Brummett had not asked for an accounting and Respondent had not provided any accounting to Brummett for the \$16,200. Brummett's request for an accounting was followed by additional requests for an accounting after Respondent did not provide an accounting to Brummett as well as verbal and written requests for copies of documents from his client file in June 2012.

4. On or about June 21, 2012, the State Bar of California ("State Bar") received a complaint from Brummett against Respondent. Although Brummett had not terminated Respondent's employment, Brummett was seeking to obtain a copy of his client file from Respondent and a copy of the fee agreement he had with Respondent. On or about July 11, 2012, the State Bar mailed a letter to Respondent about Brummett's complaint and in the letter, asked Respondent to provide the client file to Brummett. On or about July 20, 2012, Brummett also sent a written request for his file to Respondent.

5. In September and October 2012, a State Bar investigator and a deputy trial counsel repeatedly contacted Respondent to obtain his written response to Brummett's complaint and to have Respondent comply with Brummett's requests for his file and an accounting. Respondent did not provide a written response by the requested deadlines and did not comply with Brummett's requests.

6. On November 15, 2012, the deputy trial counsel sent e-mail to Respondent requesting his overdue written response to Brummett's complaint. On November 19, 2012, the deputy trial counsel called Respondent and left a message that the State Bar was still waiting for Respondent's written response to Brummett's complaint. On or about November 21, 2012, Respondent called the deputy trial counsel and requested an extension to respond to Brummett's complaint. The deputy trial counsel

counsel and requested an extension to respond to Brummett's complaint. The deputy trial counsel granted Respondent's extension request. On December 5, 2012, Respondent provided a written response to Brummett's complaint to the State Bar. In the response, Respondent stated that he was currently in the process of copying the client file for Brummett.

7. On December 6, 2012, the investigator sent an e-mail to Respondent, asking him to provide verification that he had provided the client file to Brummett and asking him to provide an accounting so that Brummett could pursue fee arbitration if he chose to do so. On December 21, 2012, the investigator sent another letter to Respondent, asking him to provide verification that he had returned the client file to Brummett and asking him to provide an accounting by January 10, 2013.

8. On January 4, 2013, Brummett's attorney, Sanford Jossen ("Jossen"), sent a letter to Respondent. Respondent received the January 4, 2013 letter in or about January 2013. In the letter, Jossen notified Respondent that he was now representing Brummett with respect to all matters, thereby terminating Respondent's employment, and Jossen requested on behalf of Brummett that Respondent release Brummett's complete file by January 30, 2013 and provide a written accounting of the \$16,200 and a refund of any unearned fees.

9. On February 4, 2013, a State Bar deputy trial counsel sent e-mail to Respondent about Brummett's complaint with a copy of the State Bar's letter of December 21, 2012, and asked Respondent to provide a written response to the December 21, 2012 letter. Respondent received the e-mail on February 4, 2013 but did not respond to the e-mail.

10. After the Notice of Disciplinary Charges ("NDC") was filed in this matter on March 11, 2013, Respondent did not timely serve his response to the NDC. On April 8, 2013, the State Bar was required to file a motion to enter Respondent's default in order to obtain Respondent's response to the NDC. Respondent filed his response to the NDC on April 16, 2013. On April 16, 2013, during an in person status conference that Respondent attended, the court ordered the parties to participate in a voluntary settlement conference ("VSC"). The court set the VSC for June 3, 2013. Respondent was aware of the date and time of the VSC, but Respondent did not appear for the VSC on June 3, 2013. Also, on April 19, 2013, the State Bar served its Request for Discovery on Respondent by mail. Respondent's response to the discovery request was due by May 14, 2013. Respondent never responded to the discovery request.

11. On June 10, 2013, Respondent sent two parcels via certified mail to Brummett consisting of the client file Respondent had maintained for Brummett.

12. On June 13, 2013, Respondent mailed to Brummett a written accounting, dated June 12, 2013, for the \$16,200 received from Brummett.

13. On June 19, 2013, Respondent participated in a VSC requested by the parties and entered into a stipulation with the State Bar to undisputed facts and to the admission of the State Bar's trial exhibits in advance of the trial set for July 12, 2013.

#### CONCLUSIONS OF LAW:

14. By not releasing the client file to Brummett until June 2013, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).



15. By not providing any accounting of the \$16,200 to Brummett until June 2013, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

#### **ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.2(b)(i)):** In case nos. 12-O-13319, 12-O-13320, and 12-O-15652, Respondent stipulated to a one-year stayed suspension and a two-year probation, effective May 10, 2013.

In case no. 12-O-13319, Respondent stipulated that he failed to respond promptly to his client's status inquiries in a conservatorship, failed to provide an accounting of fees and failed to promptly refund unearned fees.

In case no. 12-O-13320, Respondent stipulated that he failed to respond promptly to his client's status inquiries in a conservatorship, failed to perform legal services with competence, failed to provide an accounting of fees, failed to promptly refund unearned fees, and failed to cooperate in the State Bar's investigation of the client's complaint.

In case no. 12-O-15652, Respondent stipulated that he failed to respond promptly to his client's status inquiries in a conservatorship, failed to perform legal services with competence, and failed to promptly refund unearned fees.

**Indifference (Std. 1.2(b)(v)):** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by delaying the release of Brummett's file and his production of an accounting to Brummett until June 2013.

**Lack of Cooperation (Std. 1.2(b)(vi)):** Respondent demonstrated a lack of cooperation with the State Bar during the State Bar's investigation by not providing responses to the State Bar upon request and during the State Bar Court proceedings regarding Brummett's complaint by not timely filing his response to the NDC, by not responding to the State Bar's discovery request, and by not participating in the VSC set for June 3, 2013.

**Additional Aggravating Circumstance:** Respondent's prior record of discipline involved similar misconduct of failing to account and failing to cooperate in a State Bar investigation, which is a serious aggravating circumstance. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [prior discipline a serious aggravating circumstance because prior misconduct very similar to present misconduct].)

#### **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**Additional Mitigating Circumstance:** On June 19, 2013, Respondent entered into a stipulation with the State Bar to undisputed facts and to the admission of the State Bar's trial exhibits in advance of the trial set for July 12, 2013. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 107.)

## 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 two 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.

Although standard 2.2(b) calls for a minimum three-month actual suspension for a violation of rule 4-100 of the Rules of Professional Conduct, it is not the applicable standard. Respondent’s misconduct involves a failure to account for advanced fees rather than trust funds. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, where the Review Department concluded that the duty to account under Rules of Professional Conduct, rule 4-100(B)(3), included a duty to account for advanced fees.)

Further, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust. (Standard 1.7(a).)

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.10, which applies to Respondent’s violations of Rules of Professional Conduct, rule 3-700(D)(1). Standard 2.10 provides that culpability of a member of a wilful violation of any Rule of Professional Conduct not specified in these 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 forth in standard 1.3. The primary purposes of imposing discipline are 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

The gravamen of Respondent's misconduct was his lengthy delay in providing the client file and an accounting to Brummett and his indifference towards rectifying of his misconduct, despite multiple requests for Respondent's compliance by Brummett, his attorney, and the State Bar. While Respondent's delay in providing the file and an accounting prevented Brummett from reviewing the client file and Respondent's accounting to determine if he disputed the fees paid, Brummett was not otherwise harmed by Respondent's misconduct. Also, Respondent's misconduct was aggravated by his lack of cooperation with the State Bar during the State Bar's investigation and disciplinary proceeding. However, Respondent is entitled to mitigation for entering into a stipulation with the State Bar to undisputed facts and to the admission of the State Bar's trial exhibits. Further, Respondent's misconduct is aggravated by his prior discipline involving similar misconduct for which he received a stayed suspension of one year.

Brummett's complaint against Respondent was pending and Respondent's misconduct occurred during the time when Respondent entered into a stipulation to discipline in case numbers 12-O-13319, 12-O-13320, and 12-O-15652 in November 2012. The aggravating force of prior discipline is generally diminished if the misconduct occurred during the same period as the misconduct in the prior matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) However, the aggravating effect of prior discipline is not diminished if the new misconduct occurred after the filing of formal charges in the prior case. (*In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 282-283 [prior record of discipline found to be an aggravating circumstance where the misconduct occurred between the filing of formal charges and the hearing referee's decision].) Here, the aggravating force of Respondent's prior discipline is not diminished. In Respondent's prior disciplinary matters, disciplinary charges were filed on July 31, 2012. Respondent was given ample opportunity, before the filing of disciplinary charges in the present matter on March 11, 2013, to resolve Brummett's complaint by providing a copy of the file and an accounting as requested by Brummett. Respondent continued to delay providing the client file and an accounting to Brummett until June 2013.

The applicable standards warrant, and the primary purposes of imposing discipline would be satisfied by an actual suspension of 90 days, with a requirement that Respondent notify the public, opposing counsel, and the courts of his discipline.

## **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>
12-O-16029	Three	Rules of Professional Conduct, rule 3-700(D)(2)

## **FEE ARBITRATION CONDITIONS OF PROBATION:**

### **A. Respondent's Duty to Participate in Fee Arbitration**

Unless HAC Brummett III ("Brummett") waives his right to fee arbitration, Respondent must participate and cooperate in any fee arbitration request by Brummett, including making any payment required by the organization conducting the fee arbitration to start the process. If fee arbitration is

requested by Brummett, the fee arbitration will be for the \$16,200 in fees that Brummett paid Respondent from December 22, 2008 to April 18, 2012. Respondent must not request more fees than have already been paid by, or on behalf of, Brummett.

If Brummett requests fee arbitration by the effective date of the Supreme Court's order in this matter, Respondent must provide the Office of Probation with a copy of the conformed request for fee arbitration within forty-five (45) days from the effective date of the Supreme Court's order in 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. 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.

#### **C. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to**

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$16,200 in fees that Brummett paid Respondent, plus interest of 10% per annum from April 18, 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 Brummett 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 Brummett. 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

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.

**D. 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 \$16,200 paid to Respondent within 30 days plus 10% interest from April 18, 2012.

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 18, 2013, the prosecution costs in this matter are \$5,418. 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.

(Do not write above this line.)

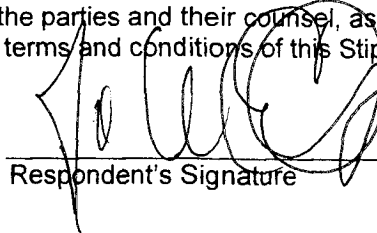
In the Matter of:  
John Maurice Ebner

Case number(s):  
12-O-16029-RAH

### SIGNATURE OF THE PARTIES

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

06/26/13  
Date

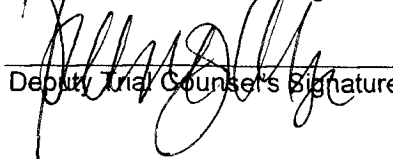
  
Respondent's Signature

John M. Ebner  
Print Name

Date

6/26/13  
Date

Respondent's Counsel Signature

  
Deputy Trial Counsel's Signature

Print Name

Diane J. Meyers  
Print Name

(Do not write above this line.)

In the Matter of: John Maurice Ebner	Case Number(s): 12-O-16029-RAH
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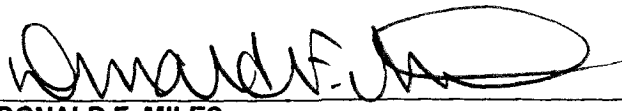
### ACTUAL SUSPENSION ORDER

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.

Page 6: The box for "Other Conditions;" is checked and the following language is added: "See Fee Arbitration Conditions of Probation, pp. 11-13, below."

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 7/11/13   
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 July 15, 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:

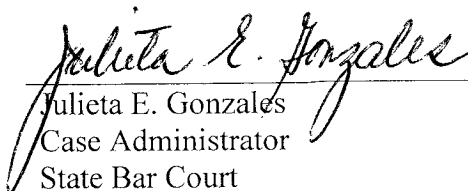
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN MAURICE EBNER ESQ  
100 OCEANGATE STE 1200  
LONG BEACH, CA 90802

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 15, 2013.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Case Administrator  
State Bar Court