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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Drew Massey Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2525 Tel: (213) 765-1204 Bar # 244350	Case Number(s): 13-H-16382	For Court use only <div style="text-align: center;"> FILED JUL 02 2014 <i>JK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Mark Alan Brifman P.O. Box 950447 Mission Hills, CA 91395 Tel: (818) 920-2113 Bar # 75923	<h2 style="margin: 0;">PUBLIC MATTER</h2>	
In the Matter of: MARK ALAN BRIFMAN Bar # 75923 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO 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.

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A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 21, 1977**.
- (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 **11** 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."
- (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):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **12-O-14552**
 - (b) Date prior discipline effective **February 1, 2013**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **California Business and Professions Code § 6103**
 - (d) Degree of prior discipline **Private Reproval. See attachment to stipulation at page 8.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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.
- (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 attachment to stipulation at page 8.**

- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct 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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. **See attachment to stipulation at page 8.**
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

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Additional mitigating circumstances

Pre-filing Stipulation - See attachment to stipulation at page 9.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is 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.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.

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- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Respondent completed Ethics School on May 1, 2014. Protection of the public does not require he re-take Ethics School.**
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **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 passed the MPRE given on March 29, 2014. Protection of the public does not require that he re-take the MPRE.**
- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MARK ALAN BRIFMAN

CASE NUMBER: 13-H-16382

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. 13-H-16382 (State Bar Investigation)

FACTS:

1. In December 2012, Respondent entered into a Stipulation Re Facts, Conclusions of Law, and Disposition ("Stipulation") with the State Bar of California in case number 12-O-14552. On January 11, 2013, the Hearing Department of the State Bar Court filed an order approving the Stipulation and imposing the private reproof with conditions set forth in the Stipulation ("reproof order") which became effective February 1, 2013.
2. Pursuant to the reproof order, Respondent was ordered to comply with conditions of reproof. Among other conditions, Respondent was required to:
 - a. comply with the State Bar Act and Rules of Professional Conduct;
 - b. submit written quarterly reports to the Office of Probation each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof certifying under penalty of perjury whether he has complied with the State Bar Act, Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter and to file a final report containing the same information no earlier than twenty days prior to the expiration of the condition period attached to the reproof and no later than the last day of said period;
 - c. pay restitution to Kousha Berokim, or the Client Security Fund if appropriate, in the amount of \$3980, plus 10% interest per annum accruing from August 18, 2011 for \$790 of the restitution, and from February 10, 2012 for the remaining \$3190 until paid in full, and provide proof of same to the Office fo Probation within ninety days of the effective date of the disciplinary order;
 - d. attend State Bar Ethics School, pass the test given at the end, and provide satisfactory proof of same to the Office of Probation within one (1) year of the effective date of the disciplinary order; and
 - e. take and pass the Multistate Professional Responsibility Examination ("MPRE") and provide satisfactory proof of same to the Office of Probation within one year of the effective date of the disciplinary order.

3. Respondent's Quarterly Report due April 10, 2013 was filed late on April 12, 2013. The Quarterly Report due July 10, 2013 was filed late on July 15, 2013. The Quarterly Report due October 10, 2013 was filed late on November 5, 2013. The Quarterly Report due January 10, 2014 was filed late on January 27, 2014. The final Quarterly Report due February 1, 2014 was filed late on February 3, 2014.

4. Respondent did not complete State Bar Ethics School by February 1, 2014 as required. Instead, Respondent completed Ethics School on May 1, 2014.

5. Respondent did not take and provide proof of passing the MPRE as required by February 1, 2014. Instead, Respondent passed the test administered March 29, 2014.

6. Respondent did not timely submit proof of restitution to Kousha Berokim by the deadline of May 2, 2013. Respondent paid the principal on April 27, 2013 but did not submit adequate documentation to the Office of Probation until November 5, 2013. Respondent paid the interest on November 7, 2013 and provided proof to the Office of Probation on November 16, 2013.

CONCLUSIONS OF LAW:

7. By failing to timely file five Quarterly Reports, timely pay restitution plus interest and provide proof of same to the Office of Probation, timely complete State Bar Ethics School, and timely pass the MPRE, Respondent failed to comply with conditions attached to his reproof in willful violation of Rules of Professional Conduct, rule 1-110.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline consisting of the private reproof imposed in case number 12-O-14552 and effective February 1, 2013, the violation of which is the basis of this matter. In the prior matter, Respondent violated Business and Professions Code section 6103 by failing to pay attorney's fees and costs in the sum of \$3,190 to his opposing counsel as he was ordered by Court orders dated August 18, 2011 and February 10, 2012. In mitigation, Respondent had no prior discipline and there was no client harm. Respondent also entered into a pre-trial stipulation. No factors were found in aggravation.

Multiple Acts of Misconduct (Std. 1.5(b)): From April 2013 through February 2014 Respondent committed multiple acts of misconduct by failing to comply with at least eight separate reproof terms and conditions.

MITIGATING CIRCUMSTANCES.

Emotional/Physical Difficulties (Std. 1.6(d)): At the time of the misconduct, Respondent suffered extreme emotional and medical difficulties related to a life threatening medical condition that substantially interfered with Respondent's ability to timely comply with reproof conditions. Treatment included a major surgery and recovery period which also greatly interfered with Respondent's ability to timely comply.

Prefiling Stipulation: Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to the filing of disciplinary charges. Respondent's cooperation at this early stage will save the State Bar significant resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

Standard 2.10 applies to Respondent's failure to comply with the conditions of the private reproof and provides that a wilful violation of the Rules of Professional Conduct, rule 1-110 should result in actual suspension. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders.

Standard 1.8(a) provides that if an attorney has a record of one prior discipline, the discipline imposed for the current misconduct must be greater than the previous discipline unless the prior discipline was remote in time and the offense was of minimal severity. Respondent's prior discipline is not remote. Accordingly, the degree of discipline imposed in this matter must be greater than the private reproof imposed in the prior proceeding.

Pursuant to Standard 2.10, actual suspension is appropriate in this matter. However, while Respondent's misconduct falls within Standard 2.10, the mitigating circumstances are highly compelling. Moreover, Respondent belatedly complied with all conditions of his private reproof including Quarterly Reports, restitution, Ethics School, and the MPRE. In light of the fact that Respondent's compliance period was

severely and substantially interrupted by his medical diagnosis and surgery; and in light of the fact that by entering into this stipulation, Respondent has acknowledged his misconduct and demonstrated a willingness to comply with his ethical responsibilities a deviation from the level of discipline suggested by Standard 2.10 is appropriate. A one (1) year stayed suspension, with a two (2) year probation with conditions will protect the public, the courts, and the legal profession, help maintain high professional standards, and preserve public confidence in the profession.

Case law supports this recommendation. In *Conroy*, the attorney received a private reproof and then failed to abide by the conditions of his private reproof when he did not complete the CPRE.¹ (*Conroy v. State Bar* (1990) 51 Cal.3d 799.) The attorney failed to take the CPRE "without explanation" and then defaulted when proceedings were brought against him. The attorney appealed to the Supreme Court. For failing to meet that single reproof condition, the attorney received a one year stayed suspension and one year probation with conditions including an actual suspension of sixty (60) days. In aggravation there was a prior record of discipline, failure to appreciate the seriousness of the proceedings, and absence of remorse. In mitigation, the attorney belatedly sat for and passed the CPRE.

The level of discipline imposed in *Conroy* is in line with the current Standards. However, here Respondent has fewer aggravating circumstances than *Conroy* and powerful mitigating circumstances that were not present in *Conroy*. Given the difference in aggravation and mitigation, a sanction lower than that imposed in *Conroy* is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 4, 2014, the prosecution costs in this matter are \$2,447.00. 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.

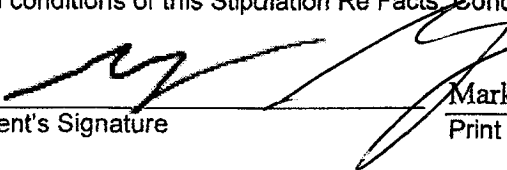
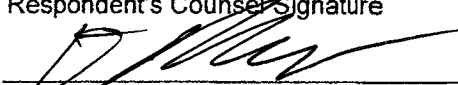
¹ The California Professional Responsibility Examination was the predecessor to the MPRE.

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In the Matter of: Mark Alan Brifman	Case number(s): 13-H-16382
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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.

<u>6-26-14</u> Date	 Respondent's Signature	<u>Mark A. Brifman</u> Print Name
<u>6-30-14</u> Date	 Respondent's Counsel Signature	<u>Drew Massey</u> Print Name
<u> </u> Date	<u> </u> Deputy Trial Counsel's Signature	<u> </u> Print Name

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In the Matter of: Mark Alan Brifman	Case Number(s): 13-H-16382
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STAYED 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.)**

07-02-2014
Date


RICHARD A. PLATEL
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 2, 2014, 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:

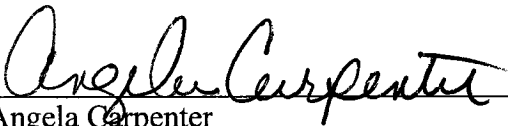
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MARK ALAN BRIFMAN
PO BOX 950447
MISSION HILLS, CA 91395

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

DREW MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 2, 2014.



Angela Carpenter
Case Administrator
State Bar Court