

FILED

SEP 21 2016

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 13-O-17461-LMA
)	
JESSE SOTO ORTIZ III,)	DECISION AND ORDER SEALING
Member No. 176450,)	CERTAIN DOCUMENTS
)	
A Member of the State Bar.)	
)	
)	
)	

Introduction¹

In this disciplinary proceeding, respondent **Jesse Soto Ortiz III** (Respondent)² was accepted for participation in the State Bar Court’s Alternative Discipline Program (ADP). As the court has now found that Respondent has successfully completed the ADP, the court will recommend to the Supreme Court that Respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for two years subject to certain conditions.

Pertinent Procedural History

On July 16, 2014, the State Bar of California’s Office of Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case no. 13-O-17461.



¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

² Respondent was admitted to the practice of law in this state on June 12, 1995, and has been a member of the State Bar of California since that time.

Respondent sought to participate in the State Bar Court's ADP. This matter was referred to the ADP on August 11, 2014.

On July 30, 2014, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issue. On September 29, 2014, Respondent submitted a declaration to the court, establishing a nexus between his substance abuse issues and the charges in this matter. On November 11, 2014, Respondent signed a LAP Participation Plan.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on September 24, 2014.³ The Stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances. The stipulation was received by the court on September 25, 2014.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated February 19, 2015, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if Respondent successfully completed the ADP, and (2) the discipline which would be recommended if Respondent failed to successfully complete or was terminated from the ADP. After agreeing to those alternative dispositions, Respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP, the court accepted Respondent for participation in the ADP, and Respondent's period of participation in the ADP began on February 19, 2015.

On August 29, 2016, after receiving a certificate of one year of participation in the LAP, the court issued an order finding that Respondent successfully completed the ADP.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's order approving the Stipulation, is attached and hereby incorporated by reference, as if fully set forth herein.

³ The parties signed a modified signature page on February 19, 2015.

In this matter, Respondent stipulated that he willfully: (1) failed to comply with a court order in violation of section 6103; (2) failed to perform legal services with competence in violation of rule 3-110(A); (3) failed to keep a client reasonably informed of significant developments in violation of section 6068, subdivision (m); and (4) failed to take reasonable steps to avoid foreseeable prejudice to his client upon termination of employment in violation of rule 3-700(A)(2).

In aggravation, Respondent had a prior record of discipline,⁴ engaged in multiple acts of misconduct, caused significant harm, and demonstrated dishonesty toward his client. In mitigation, Respondent cooperated with the State Bar by entering into a pretrial stipulation. In addition, it is appropriate to consider Respondent's successful completion of the ADP as a further mitigating circumstance in this matter.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but rather to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve confidence in the legal profession.

(Chadwick v. State Bar (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if Respondent successfully completed the ADP and if he did not successfully complete the ADP, the court considered the parties' briefs on discipline as well as certain standards and case law. In particular, the court considered Former Standards⁵ 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8(a), 2.5(c),

⁴ Respondent's prior record of discipline consisted of a public reproof that became effective on January 18, 2007.

⁵ Effective July 1, 2015, the standards were amended. As the Confidential Statement was prepared prior to the amending of the standards, this court relied on and applied the standards that were in effect at the time the Confidential Statement was signed.

2.8(a), 2.8(c), and 2.15, and *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459.

Because Respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders.

Recommended Discipline

It is hereby recommended that respondent **Jesse Soto Ortiz III**, State Bar no. 176450, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation⁶ for a period of two years subject to the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
2. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
3. 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 of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
4. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.

⁶ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

5. Within 30 days after 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.
6. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
7. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Direction Re Decision and Order Sealing Certain Documents

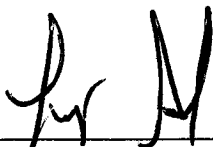
The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to:

(1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court, and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: September 21, 2016



LUCY ARMENDARIZ
Judge of the State Bar Court

(Do not write above this line.)

**State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM**

<p>Counsel For The State Bar</p> <p>Robin B. Brune Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2218</p> <p>Bar # 149481</p>	<p>Case Number (s) 13-O-17461-LMA</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED 18</p> <p>FEB 19 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Jesse Soto Ortiz III 980 9th Street, Suite 340 Sacramento, California 95814 (916) 443-9500</p>	<p>Submitted to: Program Judge</p>	
<p>Bar # 176450</p> <p>In the Matter Of: JESSE SOTO ORTIZ III</p> <p>Bar # 176450</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 12, 1995**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 7 pages, excluding 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."

(Do not write above this line.)

- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see 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 **05-O-02721**
- (b) Date prior discipline effective **January 18, 2007**
- (c) Rules of Professional Conduct/ State Bar Act violations: **Rules Prof. Conduct, rule 3-700(D)(2) [failure to refund unearned fees]; Bus. & Prof. Code § 6068(m) [failure to communicate].**
- (d) Degree of prior discipline **public reproof**
- (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (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. **See Attachment, page 5.**
- (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 Attachment, page 6.**
- (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, page 6.**
- (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.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

Pre-trial Stipulation. See Attachment, page 6.

10. On August 15, 2013, Tran's wife, Daisy Tran, ("Mrs. Tran") contacted another attorney to find out the status of her husband's appeal. The attorney located the court docket in *People v. Ricky Tran* on the court's website, and saw that the appeal had been dismissed. The attorney notified Mrs. Tran of the dismissal and directed her to the court docket. Mrs. Tran also reviewed the court docket in *People v. Ricky Tran*.

11. On August 16, 2013, Mrs. Tran contacted the respondent. The respondent told Mrs. Tran that he would have to call her back. On August 19, 2013, respondent called Mrs. Tran back. At that time, Mrs. Tran asked respondent about the status of Tran's appeal. Respondent at first told Mrs. Tran that the case was ongoing and that the appeal process could take up to three years. Mrs. Tran then asked respondent whether the appeal was really still ongoing. At that point, respondent indicated that he had run into "some snags." Respondent then admitted that he had never filed the opening brief in *People v. Ricky Tran*.

CONCLUSIONS OF LAW:

12. By failing to comply with the December 14, 2012 Order to file his appellate brief on or before December 21, 2012 in *People v. Ricky Tran*, respondent failed to abide by a court order requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

13. By failing to file the opening brief in *People v. Ricky Tran*, respondent intentionally failed to perform with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

14. By failing to advise Tran of his failure to file an appellate brief and the Court's dismissal of *People v. Ricky Tran*, respondent failed to keep his client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

15. By failing to take any action on the client's behalf after he filed for an extension in which to file the opening brief on December 14, 2012, respondent constructively terminated his employment and thereafter failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client upon his termination, in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

On January 18, 2007, respondent received a public reproof for failing to respond to the reasonable status inquiries of a client, in wilful violation of Business and Professions Code section 6068(m), and for failing to promptly refund unearned fees, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Dishonesty (Std. 1.5(d)):

Respondent demonstrated dishonesty when Mrs. Tran called him, by at first telling her that the appeal was ongoing and the appeal process can take up to three years, when in fact the matter had been dismissed.

Significant Harm (Std. 1.5(f)):

Respondent's client Tran suffered the dismissal of his appeal, due to respondent's failure to timely file the opening brief. The client hired new counsel and was able to set aside the dismissal. However, respondent's failure to notify Tran of the dismissal caused him a delay of eight months. There is significant harm when an incarcerated client suffers the dismissal of their case and is not informed of it.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent committed four acts of misconduct, and thereby committed multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Prefiling Stipulation: Respondent stipulated to this matter shortly after the State Bar filed the Notice of Disciplinary Charges. (*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].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 12, 2014, the prosecution costs in this matter are \$3,419. 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 to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

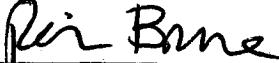
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In the Matter of: JESSE SOTO ORTIZ III	Case number(s): 13-O-17461
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SIGNATURE OF THE PARTIES

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.

9 / 22 / 14  JESSE SOTO ORTIZ III
Date Respondent's Signature Print Name

9 / 24 / 2014  ROBIN B. BRUNE
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: JESSE SOTO ORTIZ III	Case Number(s): 13-O-17461
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ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Feb 19, 2015

Date



LUCY ARMENDARIZ
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 San Francisco, on February 19, 2015, I deposited a true copy of the following document(s):


STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

JESSE SOTO ORTIZ, III
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

ROBIN BRUNE
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 19, 2015.



Mazie Yip
Case Administrator
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 San Francisco, on September 21, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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 San Francisco, California, addressed as follows:

JESSE S. ORTIZ III
JESSE ORTIZ LAW
980 9TH ST STE 340
SACRAMENTO, CA 95814

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 21, 2016.



Mazie Yip
Case Administrator
State Bar Court