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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Maria J. Oropeza, Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2569 Bar # 182660	Case Number(s): 15-O-15803-LMA; 16-O-14109	For Court use only PUBLIC MATTER FILED MAY 30 2017 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Bradley M. Zamczyk Hinshaw and Culbertson LLP One California Street, 18th floor San Francisco, CA 94111 (415) 362-6000 Bar # 151753	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: ERNEST LINFORD ANDERSON Bar # 44784 A Member of the State Bar of California (Respondent)		

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 **January 15, 1970**.
- (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 **15** 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."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case **82-I-106-AL**
 - (b) Date prior discipline effective **January 26, 1983**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **rule 6-101; Business and Professions Code Section 6068(m)**
 - (d) Degree of prior discipline **Private Reproval**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
 - 2. Case Number 83-O-94-AL; August 8, 1984; Former Rules 2-111(A); 6-101(2); Business and Professions Code Sections 6067; 6068(a) and 6103; Public Reproval.
 - 3. Supreme Court Order Number S031646 (Case Number 88-C-14303; 88-C-14545); July 6, 1993; Business and Professions Code Section 6068(a); 60 day actual suspension; one-year stayed with a three-year probation term.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.

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- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively reasonable.

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- (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 to Stipulation at page 12
Good Character - See Attachment to Stipulation at page 11

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **three years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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:
- (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 **two years**.

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- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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:

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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

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- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ERNEST LINFORD ANDERSON

CASE NUMBERS: 15-O-15803-LMA
 16-O-14109

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. 15-O-1503 (Complainant: Ms. Monica Pedrazzini)

FACTS:

1. In December 2009, Mr. Pedrazzini's daughter Monica Pedrazzini petitioned the Marin Superior Court for a temporary conservatorship over her father.

2. A conservatee generally keeps the right to control (1) his or her own salary; (2) make or change a will; (3) marry; (4) receive personal mail; (5) be represented by counsel; (6) ask a judge to change conservators; (7) ask a judge to end the conservatorship; (8) vote, unless a judge decides the conservatee is not capable of exercising this right; (9) control personal spending money, if a judge has authorized an allowance; and (10) make his or her own medical decisions, unless a judge has taken away that right and given to the conservator.

3. On March 8, 2010, Mr. Pedrazzini consented to the appointment of a conservator over his person and estate.

4. Monica Pedrazzini was named and appointed as Mr. Pedrazzini's conservator and was required to submit a one million dollar bond to the Court.

5. Mr. Robert Pedrazzini, is a conservatee and the subject of the conservatorship in the matter entitled *In re Conservatorship of Robert L. Pedrazzini*, Marin County Superior Court Case Number PR096276.

6. On March 8, 2010, the letters of conservatorship were issued, authorizing Monica Pedrazzini with the authority to consent to medical treatment to be administered to Mr. Pedrazzini; to place him in a nursing facility pursuant to Probate Code section 2356.5(b); to authorize the administration of medications appropriate for the care and treatment of dementia as described in Probate Code section 2356.5(c); and authorized her to make sales and purchases as recommended by the financial advisor for the account for both the unblocked and blocked portion of accounts held with Charles Schwab; to pay the fees associated with the financial advisor; and take distributions as appropriate from the unblocked portion of the accounts held with Charles Schwab. The letters of conservatorship did not confer upon Ms. Pedrazzini any other authorizations.

7. On November 15, 2013, Debra Whitehouse was appointed to represent Mr. Pedrazzini pursuant to Probate Code section 1470. Ms. Whitehouse had the authority to represent Mr. Pedrazzini before the probate court, inclusive of seeking the removal of the conservator or terminating the conservatorship. Ms. Whitehouse's fees would be approved by the probate court and paid by the conservatorship.

8. In August 2015, new letters of conservatorship were issued authorizing Monica Pedrazzini to consent to medical treatment to be administered to Mr. Pedrazzini; to place him in a nursing facility pursuant to Probate Code section 2356.5(b); to authorize the administration of medications appropriate for the care and treatment of dementia as described in Probate Code section 2356.5(c); and authorized her to make sales and purchases as recommended by the financial advisor for the account for both the unblocked and blocked portion of accounts held with Charles Schwab; to pay the fees associated with the financial advisor; and take distributions as appropriate from the unblocked portion of the accounts held with Charles Schwab.

9. Mr. Pedrazzini found respondent via the internet. Mr. Pedrazzini contacted respondent and requested assistance in removing Monica Pedrazzini as conservator.

10. On September 3, 2015, Mr. Pedrazzini paid respondent the sum of \$2,500, with a credit card, to represent him in seeking to remove his daughter as his conservator.

11. On September 22, 2015, Monica Pedrazzini became aware of the \$2,500 charge on her father's credit card.

12. On October 6, 2015, Monica Pedrazzini verified the credit card charge for \$2,500 for respondent's services while she was reviewing her father's credit card statement. Monica Pedrazzini immediately contacted respondent and requested that he return her call. Monica Pedrazzini also e-mailed respondent. Respondent did not return her call or respond to her e-mail.

13. On October 16, 2015, Monica Pedrazzini wrote to respondent and requested that he refund the \$2,500 to the credit card; advised him that Mr. Pedrazzini was represented by Ms. Whitehouse; and advised respondent that the conservatorship would not pay for his legal services. Monica Pedrazzini also provided respondent with the March 8, 2010 letters of conservatorship.

14. Respondent did not respond to Monica Pedrazzini's request for a refund. Respondent did not communicate with Monica Pedrazzini.

15. On October 26, 2015, Mr. Franceschini, who is the attorney for Ms. Pedrazzini as conservator, requested that respondent refund the \$2,500 to Monica Pedrazzini no later than October 30, 2015. Respondent failed to refund any of the \$2,500 to Monica Pedrazzini.

16. Between September 3, 2015 and October 14, 2016, respondent failed to refund any portion of the \$2,500 to Monica Pedrazzini.

17. Between September 3, 2015 and October 14, 2016, respondent failed to provide an accounting of the \$2,500 to either Mr. Pedrazzini or Monica Pedrazzini.

18. Between September 3, 2015 and October 14, 2016, respondent failed to file a petition to remove Monica Pedrazzini as conservator for Mr. Pedrazzini.

19. On October 14, 2016, respondent sent to Mr. Pedrazzini in care of Monica Pedrazzini a cashier's check in the sum of \$2,500.

CONCLUSIONS OF LAW:

20. By failing to refund promptly any portion of the \$2,500 to Mr. Pedrazzini or Monica Pedrazzini as conservator of the estate, upon respondent's termination of employment on October 6, 2015, respondent failed to refund an unearned fee in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

21. By failing to render an accounting between September 3, 2015 and October 14, 2016 to Monica Pedrazzini or Mr. Pedrazzini of the \$2,500 he received from Mr. Pedrazzini, respondent failed to render an accounting in willful violation Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 16-O-14109 (Complainant: Geraldine Silveria)

FACTS:

20. In May 2015, Ms. Silveria hired respondent to remove her daughter as the trustee to her trust; draft a new will and testament; void a power of attorney and assist with the issuance of a new power of attorney and to petition the court for an accounting of her trust and its assets.

21. Ms. Silveria paid respondent the sum of \$2,500 for his services in advance fees. The parties did not execute a fee agreement.

22. In July 2015, respondent and Ms. Silveria met to discuss the status of her matter. Respondent and Ms. Silveria agreed that respondent would draft letters to the trustee to obtain funds for medical procedures that Ms. Silveria needed; obtain funds for reimbursement of his legal fees; draft letters to the financial institutions for an accounting of the assets in the trust; and would respond to letters from a professional fiduciary.

23. On September 3, 2015, Ms. Silveria wrote directly to the professional fiduciary advising him that she had counsel and that she was not interested in his services. Ms. Silveria sent a copy of the letter to respondent.

24. On September 19, 2015, Ms. Silveria sent an e-mail to respondent stating that she had been attempting to reach him and inquiring if any of the tasks from the July 2015 meeting had been accomplished. Ms. Silveria stated that her surgeries had been cancelled because she did not have the funds needed for the surgeries.

25. On September 21, 2015, Ms. Silveria sent respondent a letter delineating the agreed upon tasks from the July 2015 meeting and she requested a status update.

26. In late September 2015, respondent and Ms. Silveria met to discuss the tasks from the July 2015 meeting and progress on those tasks. Respondent had failed to perform any of the agreed upon tasks.

27. On December 30, 2015, Ms. Silveria sent respondent a letter setting forth her wishes for her last will and testament. In the letter Ms. Silveria requested that respondent formalize her will.

28. On December 31, 2015, Ms. Silveria sent respondent a letter requesting that he subpoena the trust records in order to conduct an accounting of the trust assets. Respondent failed to subpoena any of the financial records from any of the financial institutions.

29. On January 18, 2016, respondent sent a letter to the trustee requesting the funds for the surgeries and other personal care items and requested that the trustee step down as trustee and allow Ms. Silveria to nominate a new trustee.

30. On February 1, 2016, Mr. Pogue the attorney for the trustee responded to respondent's January 18, 2016 letter stating that they would not agree to the nominated individual, but would agree to allow respondent to serve as trustee.

31. Respondent received the February 1, 2016 letter and failed to respond to Mr. Pogue.

32. Between January 1, 2016 and April 25, 2016, respondent failed to provide Ms. Silveria with her final will or a draft for her review.

33. Between May 27, 2015 and April 25, 2016, respondent failed to request an accounting of Ms. Silveria's trust and failed to petition any court for the accounting.

34. Between February 2016 and April 2016, respondent failed to file a petition to remove the Trustee on Ms. Silveria's trust.

35. Between May 27, 2015 and April 25, 2016, respondent scheduled several appointments with Ms. Silveria but cancelled the meetings with Ms. Silveria without providing her advance notice of the cancellations.

36. Between September 2015 and April 2016, Ms. Silveria called and e-mailed respondent requesting status updates on her matter and assistance with obtaining funds from the trustee for necessary medical procedures and expenditures. Respondent did not respond to the requests.

37. In April 2016, Ms. Silveria requested her client file after terminating respondent's services. To date, respondent has not provided a client file to Ms. Silveria.

38. Ms. Silveria requested a full refund of the advanced fees she had paid in May 2015.

39. Respondent did not refund the fees until after the State Bar became involved in the matter.

CONCLUSIONS OF LAW:

40. By failing to file a petition to remove the trustee from Ms. Silveria's trust, failing to draft a will and failing to petition for an accounting of the trust assets, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

41. By failing to respond to Ms. Silveria's request for status updates in her matter, respondent failed to respond to reasonable status inquiries in a matter in which respondent had agreed to provide legal services, a willful violation of Business & Professions Code section 6068(m).

42. By failing to release to Ms. Silveria her client file upon her request in April 2016, respondent failed to release to a client all papers and property upon a client's request in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

43. By failing to refund promptly any portion of the \$2,500 to Ms. Silveria upon respondent's termination of employment on April 25, 2016, respondent failed to refund an unearned fee in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

44. By failing to render an accounting between May 27, 2015 and October 14, 2016 to Ms. Silveria of the \$2,500 he received from her, respondent failed to render an accounting in willful violation Rules of Professional Conduct, rule 4-100(B)(3).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has three prior impositions of discipline:

1. Case Number 82-1-106-AL January 26, 1983: private reproof for failing to perform with competence and failing to communicate in one client matter. Respondent represented a client in a construction dispute in 1977. Respondent performed initial services and conducted legal research, but thereafter failed to perform.
2. Case Number 83-O-95-AL August 8, 1984: public reproof for failing to perform with competence, failing to communicate and improper withdrawal; and violations of Business and Professions Code Sections 6067, 6068(a) and 6103. Respondent represented the Mellbergs in a debt collection action. Respondent performed initial services and conducted legal research, but thereafter failed to perform and communicate with his clients.
3. Supreme Court Order Number S031646 July 6, 1993: 60 day actual suspension for conviction referrals of driving while under the influence.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent has committed multiple acts of wrongdoing in two client matters.

MITIGATING CIRCUMSTANCES.

Good Character: Respondent has presented letters from five character witnesses from the legal and general communities (three former clients, an employee, and a judge), all of whom are aware of the

misconduct in this case, and all of whom have attested to his good character. (See *In re Ford* (1988) 44 Cal.3d 810, 818 – letter writers must be aware of the full extent of respondent’s misconduct; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 624 & 628 – three character references (one attorney and two clients) merited consideration.)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney’s stipulation to facts and culpability was held to be a mitigating circumstance].)

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).)

In this matter, respondent admits to committing seven acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” The applicable standards in this matter are Standards 2.2(a); 2.7(b) and 1.8(b).

The most severe sanction applicable to respondent’s misconduct is found in standard 1.8(b), which applies because of respondent’s disciplinary history. This standard states that, unless the most compelling mitigating circumstances clearly predominate disbarment is appropriate where a member has two or more prior records of discipline, and actual suspension was ordered in any one of the prior

disciplinary matters, a pattern of misconduct exist between the prior and current disciplinary matters; or the prior and current disciplinary matters demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

However, disbarment is not mandatory under this standard even where compelling mitigating circumstances do not clearly predominate. (See *In Matter of Carver*, (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 435, *Conroy v. State Bar* (1991) 53 Cal. 3d 495 506-507)

In *Arm v. State Bar* (1990) 50 Cal. 3d 763, the Supreme Court rejected the Review Department's disbarment recommendation, despite Arm's three prior records of discipline (public reproof; one year stayed suspension; and 60-days actual suspension, imposed between 1974 and 1978). The Supreme Court found that Arm's present misconduct (misrepresentation to a judicial officer and commingling which occurred between 1983 and 1985) were not sufficiently egregious and that there was not a common thread between the present and prior misconduct. A lack of significant harm and bad faith was adequate to find that compelling mitigating circumstances predominated and justify deviation from the standard. The Court opted to impose a "lengthy" suspension of five years' probation and 18 months' actual suspension until Arm proved his rehabilitation.

In *Blair v. State Bar* (1989) 49 Cal. 3d 762, the Supreme Court declined to disbar a member despite three prior records of discipline which included a one-year stayed suspension and two six months' actual suspensions and despite finding: the current misconduct in three client matters rose to a level justifying disbarment, a "near total lack of mitigation" (i.e. not compelling or predominating), substantial aggravation and continuing client threat. Blair was placed on probation for five years, subject to a two year actual suspension.

In *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239. Lawrence was found to have engaged in multiple acts of misconduct, including failing to maintain client funds in trust, misappropriation and commingling in two client matters, and failing to comply with probation conditions. Because Lawrence had three prior records of discipline which included a private reproof in 1981, a 30-day actual suspension in 2006 and a six month actual suspension in 2009, he was subject to disbarment. Despite similarities between Lawrence's prior and current misconduct, the court reasoned that a lack of client harm, evil intent or bad faith, rendered the misconduct insufficient to warrant disbarment. (*In the Matter of Lawrence, supra*, 5 Cal. State Bar Ct. Rptr. 239, 247, citing to *Arm v. State Bar, supra*, 50 Cal. 3d 763, 768.) Also, Lawrence's extreme physical disabilities were determined to be the most compelling circumstances justifying a deviation from the standards. Lawrence was placed on probation for four years, subject to an actual suspension of three years and until he proved rehabilitation and fitness to practice law.

Like in *Arm*, *Blair*, and *Lawrence*, disbarment in this matter is not necessary for the purposes of discipline. A two year actual suspension will suffice to protect the public.

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>
15-O-15803	One	Business and Professions Code Section 6103
15-O-15803	Two	Rule 4-200(A)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 3, 2017, the discipline costs in this matter are \$7,609. 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 MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT

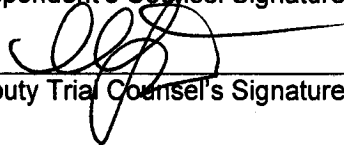
Respondent may not receive MCLE credit for completion of State Bar Ethics School (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: ERNEST LINFORD ANDERSON	Case number(s): 15-O-15803-LMA 16-O-14109
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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.

Date	Respondent's Signature	Ernest Linford Anderson Print Name
Date	Respondent's Counsel Signature	Bradley M. Zamczyk Print Name
Date <i>5/14/17</i>	 Deputy Trial Counsel's Signature	Maria J. Oropeza Print Name

(Do not write above this line.)

In the Matter of: ERNEST LINFORD ANDERSON	Case number(s): 15-O-15803-LMA 16-O-14109
--	---

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.

_____ Date	_____ Respondent's Signature	Ernest Linford Anderson Print Name
_____ Date	_____ Respondent's Counsel Signature	Bradley M. Zamczyk Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	Maria J. Oropeza Print Name

(Do not write above this line.)

In the Matter of: ERNEST LINFORD ANDERSON	Case Number(s): 15-O-15803
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

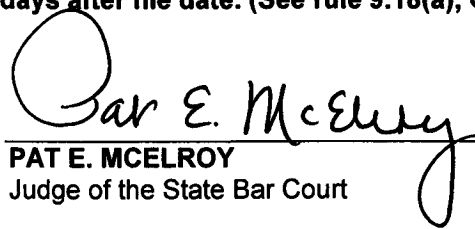
On page 2, par. B. (1)(e), delete "83-O-94-AL" and replace it with "83-O-95-AL."

On page 5, par. E. (1), delete the checked box, since the condition has already been provided for above.

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

May 30, 2017


PAT E. MCELROY
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 May 30, 2017, 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 San Francisco, California, addressed as follows:

BRADLEY M. ZAMCZYK
HINSHAW & CULBERTSON
1 CALIFORNIA ST 18TH FL
SAN FRANCISCO, CA 94111

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

MARIA J. OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 30, 2017.



Bernadette Molina
Case Administrator
State Bar Court