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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**



<p>Counsel For The State Bar</p> <p>Jennifer Roque Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2452</p> <p>Bar # 282441</p>	<p>Case Number(s): 16-O-10778</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED <i>WR</i></p> <p>JUN 07 2018</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Walter Rickert 109 Jackson St. #230 Hayward, CA 94544 (510) 886-9414</p> <p>Bar # 169968</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WALTER DAMIAN RICKERT</p> <p>Bar # 169968</p> <p>A Member of the State Bar of California (Respondent)</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 **March 16, 1994**.
- (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."
- (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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **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.
- (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.

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 12**
- (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. See page 12
- (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.
- (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. **See page 13**
- (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. **See page 12**
- (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:

No Prior Discipline. See page 12.
Prefiling Stipulation. See pages 12-13.
Community Service/Pro Bono Work. See page 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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 **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)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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.
 No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

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In the Matter of: WALTER DAMIAN RICKERT	Case Number(s): 16-O-10778
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Financial Conditions

a. Restitution

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

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than _____.

b. Installment Restitution Payments

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

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

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If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
 - b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
- 2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
- 3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

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d. Client Trust Accounting School

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WALTER DAMIAN RICKERT

CASE NUMBER: 16-O-10778

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. 16-O-10778

FACTS:

1. On April 24, 2015, John and Kay Gabor (“the Gabors”) hired respondent to represent them and file a complaint alleging Fraud and Elder Abuse against a trustee whom they claimed misappropriated their trust funds. Pursuant to California Code of Civil Procedure section 338, Fraud has a three-year statute of limitations, and pursuant to California Welfare and Institutions Code section 1561.30, Elder Abuse has a four-year statute of limitations. Respondent had until June 22, 2015 to file the complaint for Fraud, and until June 22, 2016 to file for Elder Abuse. The Gabors signed a fee agreement and paid \$5,000 in cash to respondent in advanced fees. The Fee Agreement they signed provided: “Clients shall deposit the sum of \$5,000.00 with Attorney prior to Attorney’s Representation. This sum shall be deposited in Attorney’s trust account and will be used to pay costs, expenses and legal fees owed to Attorney. Clients hereby authorize Attorney to withdraw sums from the trust account to pay such costs and/or fees as Clients incur in the course of Attorney’s representation.” Respondent failed to deposit the \$5,000 into the Client Trust Account (“CTA”) as required by the fee agreement. Instead, respondent put the cash in a lock box.
2. Prior to June 22, 2015, respondent advised the Gabors against filing a Fraud complaint and recommended that they file an Elder Abuse complaint instead. The Gabors consented.
3. On September 22, 2015, respondent visited the Gabors’ home to have them review and sign the complaint for Elder Abuse. The Gabors paid respondent \$900 in cash to cover court filing costs. Respondent never deposited the advanced costs into the CTA and never paid the court filing fees. Thereafter, respondent failed to perform any further work on behalf of the Gabors. Respondent did not earn all the advanced fees paid by the Gabors.
4. On September 24 and 29, 2015, John Gabor emailed respondent revisions of the complaint. Respondent received the emails, but failed to respond. Between October 19, 2015 and October 22, 2015, John Gabor sent respondent emails and left voicemail messages for respondent regarding the status of the case. Respondent received the communications. On October 22, 2015, respondent emailed John Gabor: “I am sorry that I have not been available these past couple of weeks. I will give you a call tomorrow (Friday).” On October 23, 2015, John Gabor

emailed respondent requesting a status update on the case. Respondent received the email. On October 28, 2015, respondent stated to John Gabor he will file complaint for the civil suit on October 29, 2015.

5. On November 2, 2015, John Gabor checked with Santa Clara County Superior Court clerk and found no record of the complaint being filed. From November 2, 2015 through November 6, 2015, John Gabor emailed respondent and left voicemails with respondent requesting a status update on the case. Respondent received the communications, but failed to respond.
6. On November 10, 2015, the Gabors emailed respondent and terminated his representation as their attorney. In the email, the Gabors requested a full refund of \$5,900 and their client file. Respondent received the email, but failed to respond.
7. On December 15, 2015, the Gabors submitted a complaint to the State Bar. As of January 18, 2016, respondent was on notice of the State Bar complaint.
8. On February 1, 2016, respondent mailed the Gabors an itemized accounting statement, their client file, and a refund check in the amount of \$1,522.40, which included the \$900 paid as advanced costs. On April 24, 2018, respondent issued a refund check to the Gabors for the amount of \$4,377.60, the remainder of the \$5,000 they had initially paid to respondent as advanced fees.
9. At all relevant times herein, respondent maintained a client trust account ("CTA") at Bank of America, account number 0016xxxxxxx.
10. On December 3, 2015, respondent issued a CTA check in the amount of \$725 from respondent's personal funds commingled in respondent's CTA. On January 20, 2016, respondent issued a CTA check in the amount of \$1,370 from respondent's personal funds commingled in respondent's CTA. On March 2, 2016, respondent issued a CTA check in the amount of \$235 from respondent's personal funds commingled in respondent's CTA.

CONCLUSIONS OF LAW:

11. By failing to perform any work after drafting the initial complaint on September 22, 2015, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.
12. By failing to respond to five emails and nine voicemails that respondent received between October 19, 2015 through November 6, 2016 from the Gabors, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).
13. By failing to return the clients' file for three months after termination and the Gabors requested return of the client file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

14. By failing to refund the Gabors the unearned fees until April 24, 2018, when the clients terminated respondent and requested a refund in November 2015, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.
15. By failing to deposit \$5,000 in advanced fees into his Client Trust Account as required by the fee agreement and by failing to deposit \$900 in advanced costs into his Client Trust Account, respondent failed to deposit funds in a bank account labelled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.
16. By commingling funds belonging to respondent in respondent's client trust account, respondent commingled funds in a bank account labelled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)). Respondent engaged in six acts of misconduct, representing multiple acts of misconduct.

Harm 1.5(f): Respondent caused significant harm to his clients by failing to timely refund unearned fees.

MITIGATING CIRCUMSTANCES.

Good Character (std. 1.6(f)): Respondent submitted eight character letters from people aware of the full extent of respondent's misconduct who attest to his integrity, honesty and professionalism. The reference letters are from friends, attorneys, and former clients.

No Prior Record of Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practiced law for approximately 24 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Community Service/Pro Bono Work: From 1994 to the present, respondent has been a member of the Alameda County Bar Association's Volunteer Legal Services Corporation, and continues to take referrals from them. From 2012, respondent has participated in the Alameda County Bar Association's Modest Means Program, providing reduced-fee legal services to those with a limited income. Since 2012, he has taken 235 Modest Means referrals, which represents at least 117 hours in free consultations. Since 2014, he has billed a total of 460 *pro bono* hours and he currently has seven active *pro bono* matters. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [civic service and charitable work considered as evidence of good character].)

Prefiling 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].)

Family Problems: Respondent has provided evidence that the petition for his divorce was filed September 23, 2015, the day after respondent had met with the clients in this case to have them sign the complaint. This was a traumatic experience for respondent, and caused him stress, anxiety and an inability to concentrate on his work. The filing of respondent's divorce petition was the direct cause in his failure to complete the revisions to the complaint and subsequently file the complaint. (*In re Naney* (1990) 51 Cal. 3d 186, 192 [where mitigative credit was given for unusual stress caused by marital problems].) Respondent's divorce proceedings have since concluded.

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.) The standards help fulfill the primary purpose 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 Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal. 4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) 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 discipline 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 lesser 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 one client matter, respondent failed to perform, failed to communicate, failed to promptly refund unearned fees, failed to promptly return the client file and failed to deposit funds in trust. In addition, respondent commingled personal funds in his client trust account. The most severe sanction applicable to respondent's misconduct is found in Standard 2.2(a), which applies to commingling and provides: "Actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds."

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent committed multiple acts of misconduct, and significantly harmed the clients by failing to promptly refund unearned fees. Respondent is entitled to

mitigation for no prior discipline in 24 years of practice, for entering into a pre-filing settlement, for family difficulties he was undergoing at the time the misconduct occurred, for good character and for *pro bono* work.

Although respondent is entitled to substantial mitigation, given the serious nature of the misconduct and aggravating factors, there is no reason to deviate from the three-month actual suspension required by Standard 2.2(a).

Case law is instructive. *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 138, is similar to this matter. In *Broderick*, the Court recommended a one-year actual suspension to continue until the attorney proved rehabilitation and fitness to practice, based on the attorney's failure to timely file a client's complaint, misuse of the client trust account as a personal account, failure to respond to the client's reasonable status inquiries, failure to deposit a client's settlement check into the Client Trust Account, and failure to cooperate in the State Bar's investigation. In aggravation, the attorney had two prior records of discipline, committed multiple acts of misconduct, significantly harmed a client, and failed to perform competently by not filing the client's complaint within the statutory period, which the Court found in aggravation as uncharged misconduct. In mitigation, the attorney was candid and cooperative with the State Bar.

Although similar to *Broderick*, this case is distinct in that the mitigation here is significant and should be afforded more weight, and there are many less aggravating factors. Therefore, discipline should be less than that imposed in *Broderick*.

On balance, a 90-day actual suspension, two years' stayed suspension, and two years' probationary period with a condition that respondent attend State Bar Client Trust Accounting School and provide a client funds certificate with his quarterly reports, will serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 8, 2018, the discipline costs in this matter are \$3,215. 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, State Bar Client Trust Accounting School and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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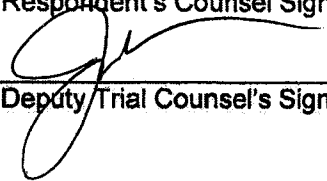
In the Matter of: WALTER DAMIAN RICKERT	Case number(s): 16-O-10778
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SIGNATURE OF THE PARTIES

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.

5/11/18 _____  _____
Date Respondent's Signature Print Name
Walter Damian Rickert

_____ _____ _____
Date Respondent's Counsel Signature Print Name

5/15/18 _____  _____
Date Deputy Trial Counsel's Signature Print Name
Jennifer Roque

(Do not write above this line.)

In the Matter of: WALTER DAMIAN RICKERT	Case Number(s): 16-O-10778
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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 11 of the Stipulation, at numbered paragraph 12, line 2, "November 6, 2016" is deleted, and in its place is inserted "November 6, 2015".

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.)**

June 7, 2018
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 Court Specialist 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 June 7, 2018, 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:

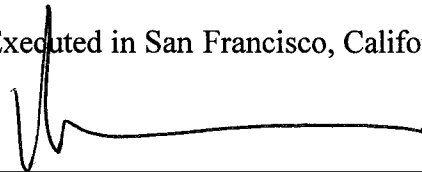
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

WALTER D. RICKERT
109 JACKSON ST # 230
HAYWARD, CA 94544

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

Jennifer E. Roque, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 7, 2018.



Vincent Au
Court Specialist
State Bar Court