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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

ORIGINAL
PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182</p> <p>Bar # 281574</p>	<p>Case Number(s): 16-O-11725-CV 16-O-13856</p>	<p>For Court use only</p> <p>FILED MAR 24 2017 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Michael William Newcomb 45089 Vine Cliff St. Temecula, CA 92592 (951) 541-0220</p> <p>Bar # 188321</p>	<p>Submitted to: Assigned 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: MICHAEL WILLIAM NEWCOMB</p> <p>Bar # 188321</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 **June 5, 1997**.
- (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 **13 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".



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- (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: **three billing cycles following the effective date of the Supreme Court order.** (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 **14-O-00247, 15-O-13013 (See attachment, page 10.)**
 - (b) Date prior discipline effective **January 6, 2017**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(m) and Rules of Professional Conduct, rules 3-110(A), 3-700(D)(1) and 4-100(B)(3)**
 - (d) Degree of prior discipline **one-year stayed suspension, a one-year probation with conditions.**
 - (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.
- (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 attachment, page 10.
- (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.

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- (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:

Pretrial Stipulation, See attachment, page 10.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- 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 **one year**, 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: **Pursuant to respondent's prior discipline in Supreme Court Case No. S23741 (State Bar Court Case Nos. 14-O-00247; 15-O-13013), effective January 6, 2017, respondent has been ordered to complete Ethics School.**
- (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:

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- | | |
|---|---|
| <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: **Pursuant to respondent's prior discipline in Supreme Court Case No. S23741 (State Bar Court Case Nos. 14-O-00247; 15-O-13013), effective January 6, 2017, respondent has been ordered to provide proof of passage of the MPRE to the Office of Probation.**
- (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:**

6. On April 11, 2016, the State Bar Investigator sent a follow up letter to respondent at respondent's membership records address, requesting his response to the allegations of misconduct in State Bar Case No. 16-O-11725, by April 25, 2016. The letter was not returned as undeliverable or for any other reason. Respondent failed to provide a response.

7. On May 26, 2016, the State Bar Investigator called respondent at his membership records telephone number, 951-451-0220, and left a voicemail message requesting that respondent provide his past due response to the misconduct alleged in State Bar Case No. 16-O-11725. Respondent received the voicemail message, but did not return the phone call or submit a response.

8. On May 26, 2016, the State Bar Investigator sent an email to respondent at his membership records e-mail address and alternate e-mail address, Michael@newcomb-law.com and Michael@newcomblawgroup.com respectively, requesting respondent's written response to allegations of misconduct in State Bar Case No. 16-O-11725, by June 6, 2016. Respondent received the e-mails but did not submit a response.

CONCLUSIONS OF LAW:

9. By holding himself out as entitled to practice law and actually practicing law when respondent was not an active member of the State Bar by appearing in Riverside County Superior Court in a civil matter, respondent engaged in the unauthorized practice of law in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code section 6068(a).

10. By holding himself out as entitled to practice law and actually practicing law by appearing in Riverside County Superior Court in a civil matter, when respondent knew that respondent was not an active member of the State Bar, respondent engaged in an act of moral turpitude in willful violation of Business and Professions Code section 6106.

11. By failing to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters, telephone calls and e-mails, which requested respondent's response to the allegations of misconduct being investigated in case no. 16-O-11725, respondent engaged in a willful violation of Business and Professions Code section 6068(i).

Case No. 16-O-13856 (Complainant: Thomas Zdanowski)

FACTS:

12. On March 18, 2016, Thomas Zdanowski employed respondent to write a letter to a Mr. Moore, who was a business associate that owed Zdanowski money, asking for a payment of funds owed to Zdanowski. Zdanowski paid respondent \$2,500 in attorney's fees via personal check.

13. On March 28, 2016, respondent sent an e-mail from his email address, Michael@newcomblawgroup.com, to Zdanowski at tomellen@zdanowski.com, stating that he had negotiated Zdanowski's check and had also received documents that Zdanowski had sent to him.

14. On April 11, 2016, respondent emailed Zdanowski stating that his physician had recently prescribed him new medication, which had affected his ability to work. Respondent stated that for the

past month, his doctors had been slowly reducing the dosage of his medication such that respondent was able to do more work. Respondent added that he would need extra time to catch up on work and assured Zdanowski that he would complete the work required. Zdanowski received the e-mail.

15. On April 18, 2016, respondent emailed Zdanowski stating that respondent expected to have a draft of the letter to Mr. Moore ready by the middle of the week. Zdanowski received the e-mail. At no time did respondent provide Zdanowski with a copy of a draft of a letter to Mr. Moore.

16. On April 29, 2016, Zdanowski sent respondent an e-mail asking if something had happened. Respondent received the e-mail but did not respond.

17. On May 6, 2016, respondent emailed Zdanowski stating that the letter to Mr. Moore was partially written and that respondent would do his best to get something to Zdanowski. Respondent did not provide Zdanowski with any evidence of work performed on Zdanowski's behalf. Zdanowski received the e-mail.

18. On May 18, 2016, Zdanowski sent an email to respondent asking that respondent refund Zdanowski the fee paid and that respondent recommend another attorney that could complete the work that respondent had been employed to perform. Respondent received the e-mail but did not respond.

19. On June 2, 2016, Zdanowski sent an email to respondent terminating respondent's employment and asking for a refund of the fees paid to respondent. Respondent received the e-mail, but did not respond, provide a refund or an accounting.

20. On June 22, 2016, a State Bar Investigator sent a letter to respondent at respondent's membership records address, 45089 Vine Cliff Street, Temecula, CA 92592, requesting a response to Zdanowski's allegations of misconduct in State Bar Case No. 16-O-13856, by July 6, 2016. The letter was not returned as undeliverable or for any other reason. Respondent failed to provide a response.

21. On July 7, 2016, the State Bar Investigator sent respondent a follow up letter to respondent at respondent's membership records address, requesting a response to the allegations of misconduct in State Bar Case No. 16-O-13856, by July 21, 2016. The letter was not returned as undeliverable or for any other reason. Respondent failed to provide a response.

22. On August 8, 2016, the State Bar Investigator sent an email to respondent at his membership records e-mail address, Michael@newcomb-law.com, with copies of the State Bar's June 22, 2016 and July 7, 2016 letters requesting a response by August 5, 2016. The e-mail was not returned as undeliverable or for any other reason. Respondent failed to provide a response.

23. On August 18, 2016, the State Bar Investigator called respondent at his membership records telephone number, 951-541-0220, regarding the August 8, 2016 email to respondent. Respondent acknowledged receipt of the email and stated that he would respond by August 24, 2016. To date, respondent has failed to provide a response.

CONCLUSIONS OF LAW:

24. By failing to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters, telephone calls and e-mails, which requested respondent's response to the allegations of misconduct being investigated in

State Bar Case No. 16-O-13856, respondent engaged in a willful violation of Business and Professions Code section 6068(i).

25. By failing to render an appropriate accounting to respondent's client Zdanowski, regarding advanced attorney's fees, following termination of respondent's employment and the client's request for an accounting, respondent engaged in a willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline.

Effective January 6, 2017, the Supreme Court (Case No. S237471), in State Bar Case Nos. 14-O-00247 and 15-O-13013, ordered that respondent be suspended from the practice of law in California for one year, that execution of the suspension be stayed, and that respondent be placed on probation for one year. In this matter, respondent stipulated that he failed to render legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct, failed to render an accounting in violation of rule 4-100(B)(3), failed to respond to client inquiries in violation of Business and Professions Code section 6068(m) and failed to issue a refund in violation of rule 3-700(D)(2). The misconduct occurred in two client matters, from 2013-2015. Respondent's misconduct was mitigated by the absence of a prior record of discipline over 15 years of practice and a pretrial stipulation, and aggravated by multiple acts of misconduct and harm to the client.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's misconduct involves multiple acts of professional misconduct in two client matters, including failure to account, engaging in the unauthorized practice of law, engaging in an act of moral turpitude, and failure to cooperate in a State Bar investigation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647 [three instances of misconduct although not a pattern are sufficient to support a finding that an attorney engaged in multiple acts of misconduct].)

MITIGATING CIRCUMSTANCES.

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].) However, the mitigation for entering into a pretrial stipulation is tempered by respondent's failure to cooperate in two State Bar investigations.

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).)

One of the applicable standards here is Standard 1.8(a) which provides that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was remote and not serious.

Respondent has one prior record of discipline for a one-year stayed suspension. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, the Review Department cited *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, and explained that “part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney’s inability to conform his or her conduct to ethical norms.” The misconduct in the instant case occurred before the notice of disciplinary charges was filed in respondent’s prior disciplinary matter on April 21, 2016. Therefore, respondent’s prior discipline carries less weight in aggravation to the instant misconduct.

In the Matter of Sklar, supra, 2 Cal. State Bar Ct. Rptr. 602, 619, the Review Department found that in instances of contemporaneous misconduct, the totality of the findings in both matters should be analyzed together and an assessment made as to what level of discipline would have been appropriate had all the misconduct been charged together and heard as one case. If the misconduct here had been charged with respondent’s prior discipline, it would have increased the level of discipline because of the serious added misconduct of respondent’s act of moral turpitude. Respondent had knowledge since 2013 of a binding fee arbitration award, which he chose not to comply with. Thereafter, in 2015, the arbitrator served respondent with a motion and the State Bar Court served respondent with an order notifying him of impending involuntary enrollment to inactive status. Therefore, his unauthorized practice of law constitutes a knowing act of moral turpitude.

Standard 1.7(a) provides that if an attorney commits two or more acts of misconduct, the most severe sanction should be imposed. The most severe standard applicable here is Standard 2.11, for respondent’s act of moral turpitude in practicing law while not entitled. Respondent appeared in court as counsel for a defendant after being served with the State Bar Court’s order enrolling him inactive. Standard 2.11 provides for disbarment or actual suspension for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. Therefore, if the present misconduct here had been part of the findings in the prior disciplinary matter, the level of discipline would have been more severe.

Respondent's misconduct here, and in the prior disciplinary matter, were aggravated by multiple acts. Respondent's prior matter was aggravated by harm. Respondent had mitigation for no prior record of discipline over a 15-year period in the prior matter. In the instant matter, respondent also has mitigation for entry into a pretrial stipulation although this mitigation is tempered by respondent's failure to cooperate in two State Bar investigations in the instant case. In light of the aggravation and mitigation, a one-year stayed suspension, one-year probation with conditions, including a 90-day actual suspension is appropriate here to serve the purposes of discipline.

Case law supports this level of discipline. In *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rpt. 896, a California attorney, moved to South Carolina, held herself out as an attorney entitled to practice in South Carolina and represented two clients in South Carolina. The attorney represented a client on a contingency fee basis in a sexual harassment case and collected \$8,000 to cover expenses associated with the lawsuit. The attorney settled the case, received her fee and expenses, and transferred the remainder of the money to her client. The attorney was found culpable of two counts of the unauthorized practice of law, two counts of collecting an illegal fee, two counts of failing to refund unearned fees, failing to maintain a client trust account and an offense of moral turpitude for dishonesty with a disciplinary investigation and making misrepresentations during a State Bar investigation. The misconduct was mitigated by emotional problems, good character and entry into a pretrial stipulation of facts. The misconduct was aggravated by the attorney's prior private reproof for similar misconduct, multiple acts, harm and indifference. The attorney's conduct resulted in a level of discipline of a two year stayed suspension, two years of probation and conditions, including a six months' actual suspension.

Like the attorney in *Wells*, respondent engaged in the unauthorized practice of law, which here constituted a knowing act of moral turpitude. However, the misconduct in the instant case is less egregious than that in *Wells* as respondent's engagement in the unauthorized practice of law was isolated to one hearing and one client. After being notified by the court of his inactive status, respondent immediately withdrew as counsel. Respondent has failed to render an accounting in one client matter and failed to cooperate in two disciplinary investigations. Respondent does not have the added misconduct of collecting an illegal fee, failing to refund unearned fees, failing to maintain a client trust account or making intentional misrepresentations to the State Bar during an investigation. Unlike in *Wells*, respondent had no prior record of discipline when he engaged in the misconduct at issue in this matter. Therefore, a level of discipline less severe than that in *Wells* is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 2, 2017, the discipline costs in this matter are \$3,669. 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.

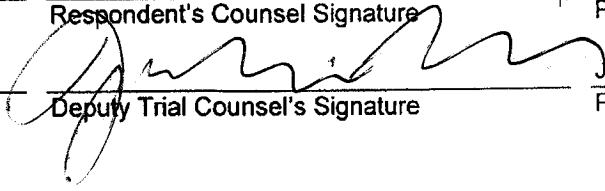
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In the Matter of: MICHAEL WILLIAM NEWCOMB	Case number(s): 16-O-11725, 16-O-13856-CV
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SIGNATURE OF THE PARTIES

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.

3-10-2017  Michael William Newcomb
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name
3/13/2017  Jamie Kim
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: MICHAEL WILLIAM NEWCOMB	Case Number(s): 16-O-11725, 16-O-13856-CV
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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.

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.)**

March 24, 2017
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 24, 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:

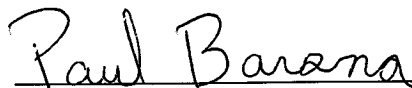
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL W. NEWCOMB
MICHAEL W NEWCOMB, ATTORNEY AT LAW
45089 VINE CLIFF ST
TEMECULA, CA 92592**

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

JAMIE J. KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 24, 2017.



Paul Barona
Case Administrator
State Bar Court