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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Carla L. Cheung</b> <b>Senior Trial Counsel</b> <b>180 Howard Street</b> <b>San Francisco, CA 94105</b> <b>(415) 538-2291</b>  Bar # 291562	<b>Case Number(s):</b> 16-O-17350-PEM; 17-O-05237; 17-C-04118	For Court use only  <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em;">APR 23 2018</div> <div style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
<b>Counsel For Respondent</b>  <b>Daniel J. Tatick</b> <b>Simas &amp; Associates, Ltd.</b> <b>11573 Los Osos Valley Rd, Ste B</b> <b>San Luis Obispo, CA 93405-6494</b> <b>(805) 547-9300</b>  Bar # 286138	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: <b>JEFFREY DAVID SIMONIAN</b>  Bar # 117564  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 **June 11, 1985**.
- (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 **14** 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
  - (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 10.
- (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 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:**

See page 10.

**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. See page 11.
- (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. See page 11.
- (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 page 11.**

**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 **60 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:



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### 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:  
 Substance Abuse Conditions       Law Office Management Conditions

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Medical Conditions

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:                         JEFFREY DAVID SIMONIAN  
CASE NUMBERS:                             16-O-17350-PEM; 17-O-05237; 17-C-04118

**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-17350 (Complainant: Victoria Preston)

**FACTS:**

1. In September 2011, Victoria Preston (“Preston”) hired respondent to represent her as administrator of her late brother-in-law’s estate. On January 13, 2012, respondent initiated probate proceedings in *In the Matter of the Estate of Patrick McDonnell* (“McDonnell Estate”) in Fresno County Superior Court. Preston lives in Iowa and only communicated with respondent via telephone and email.

2. Between 2012 and 2015, respondent was often slow to return Preston’s phone calls and emails, and to complete tasks (e.g., getting tax returns prepared by third-party accountant and closing bank accounts). As part of his duties, respondent was required to help sell the estate’s condo but delayed in doing so, and it was eventually foreclosed.

3. Between July 14, 2015, and September 2, 2015, Preston sent respondent four email messages asking for a status update. Respondent received the emails but failed to respond. On September 10, 2015, Preston contacted respondent by telephone. Respondent informed Preston that the work was about 80 percent completed, and that he would be sending her the paperwork later that week. Thereafter, respondent never sent paperwork to Preston, failed to complete any more work on behalf of the estate, and failed to finalize the probate.

4. Between September 23, 2015, and March 4, 2016, Preston left two voicemail messages and sent respondent four email messages requesting a status update. Respondent received the voicemail messages and the emails, but failed to respond.

5. On March 4, 2016, Preston reached respondent by telephone, and informed him that she had retained a new attorney, Ben Pugh (“Pugh”).

6. On May 2, 2016, Pugh sent respondent a letter by email, requesting the return of Preston’s client file. Respondent received the messages, but failed to return Preston’s client file until January 2018.

CONCLUSIONS OF LAW:

7. By failing to sell trust assets including real property and by failing to file a petition to finalize the McDonnell Estate, respondent intentionally, recklessly, or repeatedly failed to perform with competence in a matter which he was employed to provide legal services, in willful violation of Rules of Professional Conduct, rule 3-110(A).

8. By failing to respond to Preston's two telephonic and five written communications between September 23, 2015, and March 4, 2016, respondent failed to promptly respond to status inquiries made by 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).

9. By failing to promptly release Preston's client file following respondent's termination on March 4, 2016, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1).

Case No. 17-O-05237 (Complainant: Karnie Tutunjian)

FACTS:

10. Karnie Tutunjian ("Tutunjian") hired respondent to assist him in carrying out the terms a settlement agreement Tutunjian had entered into on September 27, 2013, regarding his administration of the Marilyn Tutunjian Bypass Trust ("Tutunjian Trust"). Pursuant to the settlement agreement, Tutunjian was to sell real property assets of the Tutunjian Trust and terminate the Trust. Tutunjian hired respondent to carry out the sale of three properties, and to assist in other aspects of trust administration, including preparing the trust's annual income taxes and preparing an annual statement to the trust beneficiaries.

11. On October 13, 2013, respondent filed a petition *In the Matter of the Marilyn Tutunjian Bypass Trust*, Fresno County Superior Court, case no. 13CEPR00912, to terminate the trust. Respondent was the attorney of record, representing Tutunjian as trustee. On December 2, 2013, the court granted the petition and directed respondent to submit an order to be signed by the court. Respondent failed to submit an order until June 15, 2015, after the court scheduled a hearing for his failure to submit the order.

12. Between April 8, 2016, and August 31, 2016, Tutunjian left eight voicemail messages for respondent, requesting a status update. Respondent received the messages but failed to respond. Additionally, between August 17, 2016, and August 20, 2016, Tutunjian made two in-person visits to respondent's office and left messages for respondent to call him. Respondent received the messages, but failed to respond.

13. In November 2016, Tutunjian hired new counsel, Justin Campagne ("Campagne"). On November 17, 2016, Campagne sent respondent a letter requesting the return of Tutunjian's client file. Respondent received the letter, but did not respond. Because respondent failed to return the client file, Tutunjian and Campagne were not able to determine what work had been done with regard to the trust administration. Respondent did not return Tutunjian's client file until January 2018.

## CONCLUSIONS OF LAW:

14. By failing to timely terminate the Tutunjian Trust, and by failing to sell trust assets including real property, respondent intentionally, recklessly, or repeatedly failed to perform with competence in a matter which he was employed to provide legal services, in willful violation of Rules of Professional Conduct, rule 3-110(A).

15. By failing to respond to Tutunjian's eight telephonic and two in-person communications between April 8, 2016, and August 31, 2016, respondent failed to promptly respond to status inquiries made by 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).

16. By failing to promptly release Tutunjian's client file following the request on November 17, 2016, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1).

### Case No. 17-C-04118 (Conviction Proceedings)

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

### PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

17. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

18. On December 2, 2015, the Fresno County District Attorney's Office filed a complaint charging respondent with Vehicle Code Section 23152(a) [driving under the influence of alcohol], a misdemeanor, Vehicle Code Section 23152(b) [driving with a blood-alcohol content of 0.08% or higher] a misdemeanor, and Vehicle Code 14601.5(a) [driving with a suspended/revoked license], a misdemeanor.

19. On May 4, 2016, respondent was convicted by his *nolo contendere* plea of misdemeanor violations of Vehicle Code Section 23152(b) and Vehicle Code 14601.5(a). Respondent was sentenced to 364 days in jail, with 350 days of the sentence suspended. Additionally, the court ordered respondent to complete an 18-month alcohol treatment program.

20. On September 20, 2017, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offenses for which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

## FACTS:

21. On September 9, 2015, in Fresno, California, Police Officer Jason Hurley ("Officer Hurley") observed respondent driving a motor vehicle in an unsafe manner, in that respondent made a sudden turn in front of Officer Hurley without signaling, causing Officer Hurley to slam on his brakes to avoid collision. Officer Hurley pulled over respondent's vehicle and observed respondent to be visibly intoxicated. Respondent admitted that his license was suspended due to a prior DUI, and admitted to consuming three alcoholic drinks in the three hours prior to the car stop. Respondent was unable to successfully complete the field sobriety tests. Respondent submitted to a blood test, which showed that respondent had a blood alcohol level of .16 percent.

22. On May 4, 2016, respondent plead *nolo contendere* to misdemeanor violations of Vehicle Code Section 23152(b) [driving with a blood-alcohol content of 0.08% or higher] and Vehicle Code 14601.5(a) [driving with a suspended/revoked license].

23. Respondent had previously been convicted of violating Vehicle Code Section 23152(b) [driving with a blood-alcohol content of 0.08% or higher], a misdemeanor, as follows: On May 6, 2015, in Fresno, California, Police Officer Stephen Craig ("Officer Craig") observed respondent driving a motor vehicle in an unsafe manner, in that respondent pulled out of a parking lot in front of Officer Craig, causing Officer Craig to slam on his brakes to avoid collision. Officer Craig further observed respondent driving slowly in a painted bike lane, and make a sudden turn without signaling. Officer Craig pulled over respondent's vehicle and observed respondent to be visibly intoxicated. Respondent admitted to consuming two alcoholic drinks in the 20-30 minutes prior to the car stop. Respondent was unable to successfully complete the field sobriety tests. Respondent submitted to a breath test, which showed that respondent had a blood alcohol level of .22 percent. On May 6, 2015, the California Department of Motor Vehicles sent respondent notice that his driver's license was suspended effective June 5, 2015, until October 5, 2018. Respondent did not request a hearing to reinstate his license. On August 19, 2015, respondent was convicted by his *nolo contendere* plea of a misdemeanor violation of Vehicle Code Section 23152(b) [driving with a blood-alcohol content of 0.08% or higher]. Respondent was sentenced to 13 days in jail and three years of probation, with the sentence suspended.

## CONCLUSIONS OF LAW:

24. The facts and circumstances surrounding the above-described violations did not involve moral turpitude but did involve other misconduct warranting discipline.

## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent committed six acts of misconduct in two client matters, and sustained two DUI convictions. This represents multiple acts of misconduct.

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** Respondent created a danger to public safety by driving under the influence on two occasions. Additionally, respondent's failure to act on behalf of Preston and Tutunjian significantly harmed the clients by delaying the finalization of the probate of the McDonnell Estate and the Tutunjian Trust. In the Preston matter, respondent's failure to act caused additional harm in that real property of the estate was foreclosed on when respondent took no action to sell the property for the benefit of the estate.



## MITIGATING CIRCUMSTANCES.

No prior discipline: Respondent was admitted to practice law in California on June 11, 1985, and has remained eligible to practice at all times since. Although respondent's misconduct is serious, he is entitled to significant mitigation for having practiced law for approximately 30 years without prior discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [20 years of discipline-free practice "highly significant"].)

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].)

Extraordinary Good Character (Std. 1.6(f)): Respondent has provided seven letters from members of the legal and general community, including clients and accounting/investment professionals that respondent has worked with professionally. The letters writers express that they are familiar with respondent and aware of respondent's misconduct, but nevertheless attest to respondent's good moral character and legal ability. (*In the Matter of Davis* (Review Dept. 2013) 4 Cal. State Bar Ct. Rptr. 576, 592 [significant weight afforded to attorney who provided character evidence from witnesses familiar with him and knowledge of his good character, work habits, and professional skills].)

## 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, Standard 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 Standard 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. (Standard 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Standard 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. (Standards 1.7(b) and (c).)

Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standard specify different sanctions for each act, the most severe sanction must be imposed." Applying Standard 1.7(a), the most severe sanction applicable to respondent's misconduct is found in Standard 2.7(b). Standard 2.7(b) provides that: "Actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests."

Here, respondent failed to perform, failed to communicate, and failed to timely return files in two client matters. Additionally, respondent's second DUI arrest occurred approximately three weeks after his first DUI conviction, thereby demonstrating respondent's disregard for the law and safety of others, and his unwillingness or inability to conform to his ethical responsibilities. In aggravation, respondent committed multiple acts of misconduct and caused significant harm to the public and his clients. In mitigation, respondent is entitled to significant mitigation for having practiced law for approximately 30 years without prior discipline, for good moral character, and for entering into a pre-trial stipulation. Although respondent's misconduct is serious, in light of mitigation – most significantly, respondent's lack of prior discipline in 30 years – an actual suspension at the lower end of the range is appropriate.

Case law is instructive. In *Layton v. State Bar* (1990) 50 Cal.3d 889, the Court imposed a 30-day actual suspension for an attorney who violated the Rules of Professional Conduct, rule 3-110 (then rule 6-101) and Business and Professions code section 6103. In that matter, the attorney had been hired to be the attorney and executor for a deceased client's estate, which he mismanaged and failed to close for approximately five years. The attorney received mitigation credit for his 30 years of practice without prior discipline.

Relative to *Layton*, respondent's misconduct is more egregious because it involved more than one client matter, and the additional criminal convictions. However, the mitigation for a discipline-free history is comparable. On balance, a 60-day actual suspension is warranted pursuant to the case law and the Standards.

#### **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>
16-O-17350	Five	Business and Professions Code, section 6068(i)
17-O-05237	Ten	Business and Professions Code, section 6068(i)



**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 21, 2018, the discipline costs in this matter are \$7,413. 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**

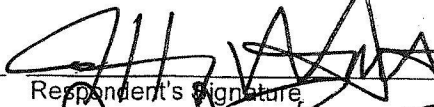


Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: <b>JEFFREY DAVID SIMONIAN</b>	Case number(s): 16-O-17350-PEM; 17-O-05237; 17-C-04118
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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.

3/26/2018		_____
Date	Respondent's Signature	Jeffrey D. Simonian
4/10/18		_____
Date	Respondent's Counsel Signature	Daniel J. Tatick
4/11/18		_____
Date	Senior Trial Counsel's Signature	Carla L. Cheung

(Do not write above this line.)

In the Matter of: JEFFREY DAVID SIMONIAN	Case Number(s): 16-O-17350-PEM; 17-O-05237; 17-C-04118
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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.)

Date April 23, 2018

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 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 April 23, 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:

DANIEL J. TATICK  
SIMAS & ASSOCIATES, LTD  
11573 LOS OSOS VALLEY RD  
STE B  
SAN LUIS OBISPO, CA 93405 - 6494

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

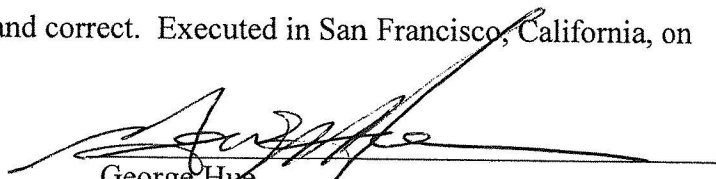
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Carla L. Cheung, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 23, 2018.

  
George Hue  
Court Specialist  
State Bar Court