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State Bar Court of California Hearing Department Los Angeles DISBARMENT			PUBLIC MATTER
Counsel For The State Bar Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182 Bar # 281574	Case Number(s): 16-O-17468-YDR 17-O-00819 17-O-01330 17-O-04201	For Court use only FILED DEC 15 2017 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
In Pro Per Respondent Michael William Newcomb 45089 Vine Cliff Street Temecula, CA 92592 (951) 541-0220 Bar # 188321	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: MICHAEL WILLIAM NEWCOMB Bar # 188321 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 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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (17) 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."

(Effective November 1, 2015)

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Disbarment



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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):

- Costs to be awarded to the State Bar.
- Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- Costs are entirely waived.

(9) ORDER OF INACTIVE ENROLLMENT:

The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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 and 15-O-13013, see pages 13-14 and Exhibit 1.
- (b) Date prior discipline effective January 6, 2017
- (c) Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rule 3-110(A), rule 3-700(D)(2) and 4-100(B)(3), and Business and Professions Code section 6068(m)**
- (d) Degree of prior discipline **one year stayed suspension and a one year probation**
- (e) If respondent has two or more incidents of prior discipline, use space provided below:

See page 14 and Exhibit 2.

- (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.

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- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See page 14.
- (10) **Lack of Candor/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 14.
- (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

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9) **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial stipulation, see page 14.

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D. Discipline: **Disbarment.**

E. Additional Requirements:

- (1) **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.
- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) **Other:**

October 24, 2016, and Court Trial set for November 8, 2016. The Court served respondent with an order regarding the January 25, 2016 Scheduling Conference Hearing, which respondent received.

9. On January 29, 2016, respondent sent the Finchers an email, which identified respondent as "Michael Newcomb, Esq" and provided the Finchers with additional legal advice regarding the Finchers' legal objectives with respect to preserving their assets. The Finchers received the email.

10. On February 2, 2016, respondent sent the Finchers emails regarding the Oakley matter, which identified respondent as "Michael Newcomb, Esq" and provided the Finchers with additional legal advice regarding the merits of their lawsuit. The Finchers received the email.

11. On March 7, 2016, pursuant to an order in State Bar Court Case number 16-ZA-11030-WKM, respondent was reinstated to active status on that date. Respondent was served with the order and received the order.

12. On August 11, 2016, opposing counsel filed and served respondent with a Notice of Hearing on Motion to Compel Responses to Interrogatories, Document Production and Appearances at Depositions, by the defendants, John Fincher and Gwenn Fincher, in the Oakley matter. The hearing was set for September 13, 2016. Respondent received the motion to compel.

13. On August 25, 2016, opposing counsel filed and served respondent with a, "Reply re: Motion to Compel Responses to Interrogatories and Declaration of Non-Opposition." Respondent received opposing counsel's reply.

14. On September 13, 2016, respondent failed to appear in court at the Motion to Compel hearing on behalf of the Finchers and failed to take any steps to have any other attorney to appear in his stead on their behalf.

15. On September 14, 2016, in the Oakley matter, the Court issued an order granting the opposing party's Motion to Compel. The Order required 1) the Finchers to appear at a deposition scheduled for September 23, 2016, 2) on or before September 21, 2016, the Finchers shall respond to interrogatories served on May 23, 2016 and 3) produce all documents responsive to Requests for Production. The order further required respondent to confirm with opposing counsel the Finchers' availability and attendance for the September 23, 2016 deposition. Respondent received the order. A hearing was set for September 27, 2016 to review defendants' compliance with the court's order.

16. Between September 14 and 27, 2016, the Finchers did not comply with the September 14, 2016 order and respondent also did not comply with the September 14, 2016 order by failing to confirm to opposing counsel the Fincher's availability for the deposition. At no time during the representation of the Finchers did respondent respond to interrogatories and requests for document productions, on their behalf.

17. On September 27, 2016, at the hearing in the Oakley matter, the Court ordered the Finchers and respondent to show cause in writing no later than October 7, 2016, why the court should not impose sanctions against them and respondent for failing to comply with the September 14, 2016 order. Respondent did not appear in court for the hearing. Respondent received the order, but did not file a written response.

18. On October 24, 2016, in the Oakley matter, the Court ordered that the Finchers' answer be stricken and default entered as to the Finchers, due to their failures to appear at the September 13 and 27, 2016 hearings, failure to obey the September 13 and 27, 2016 court orders, and failure to participate in the preparation of pretrial conference documents. Respondent received the order.

19. On October 28, 2016, respondent sent an email to John Fincher, informing him of the Court's October 24, 2016 order and suggesting steps for them to take in their case, including filing a motion to set aside default. John Fincher received the email.

20. On October 30, 2016, the Finchers sent an email to respondent terminating his services and requesting a refund of the \$7,512 legal fees. Respondent received the email and failed to provide the Finchers with an accounting. Thereafter, the Finchers hired subsequent counsel.

21. On October 31, 2016, respondent sent an email to the Finchers confirming that he would do no further work and substitute out of the Oakley matter. Respondent acknowledged the Finchers' request for a refund and that he would respond by November 4, 2016. The Finchers received the e-mail.

22. Between October 31, 2016 and November 28, 2016, the Finchers' subsequent attorney sent emails to respondent, which included a Substitution of Attorney form, and requested that respondent sign the Substitution of Attorney form, return the client file and issue a refund of fees. Respondent received the emails, but failed to provide an accounting or return the client file to the Finchers.

23. On December 13, 2016, in case number 16-O-17468, a State Bar investigator sent a letter to respondent at respondent's membership records address, requesting a written response to allegations raised in a State Bar complaint filed by the Finchers, by December 27, 2016. Respondent received the letter, but did not respond to the letter or submit a written response to the Finchers' complaint.

24. On January 5, 2017, in case number 16-O-17468, a State Bar investigator sent a letter to respondent at respondent's membership records address, requesting a written response to the Finchers' allegations by January 19, 2017. Respondent received the letter, but did not respond to the letter or submit a written response to the Finchers' complaint.

25. On January 23, 2017, in case number 16-O-17468, a State Bar investigator sent an email to respondent at respondent's membership records email address, with copies of the letters sent to respondent on December 13, 2016 and January 5, 2017, requesting respondent's written response by January 30, 2017. Respondent received the email, but did not respond to the email or submit a written response to the Finchers' complaint.

26. On April 12, 2017, a State Bar investigator sent a fax to respondent at respondent's membership records fax number, with copies of the letters sent to respondent on December 13, 2016 and January 5, 2017, requesting respondent's written response by April 19, 2017. Respondent received the fax, but did not respond to the fax or submit a written response to the Finchers' complaint at any stage during the State Bar's investigation.

CONCLUSIONS OF LAW:

27. By sending emails to the Finchers while his license was suspended, which identified respondent as an active attorney, and by providing legal advice to the Finchers during that period, respondent held himself out as entitled to practice law and actually practiced law when respondent was

not an active member of the State Bar, and therefore 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).

28. By sending emails to the Finchers while his license was suspended and when respondent knew that respondent was not an active member of the State Bar, which identified respondent as an active attorney, and by providing legal advice to the Finchers during that period, respondent held himself out as entitled to practice law and actually practiced law when respondent was not an active member of the State Bar and respondent engaged in an act of moral turpitude in willful violation of Business and Professions Code section 6106.

29. By failing to respond to the requests for interrogatories and document production, appear for the September 13, 2016 hearing, confirm the Finchers' availability for the January 25, 2016 hearing, September 23, 2016 deposition, appear for the September 27, 2016 hearing, respond to the court's Notice to Show Cause, on behalf of clients John Fincher and Gwenn Fincher, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

30. By failing to comply with the Court's September 27, 2016 order in the Oakley matter, requiring respondent to show cause in writing why the court should not impose sanctions against him, respondent engaged in a willful violation of Business and Professions Code section 6103.

31. 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, emails, and fax, which requested respondent's response to the allegations of misconduct being investigated in case number 16-O-17468, respondent engaged in a willful violation of Business and Professions Code section 6068(i).

32. By failing to render an appropriate accounting to the Finchers of the \$7,512 legal fees collected in the Oakley matter upon termination of his employment on October 30, 2016, respondent engaged in a willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 17-O-00819 (Complainant: Randy Thomas)

FACTS:

33. On March 25, 2016, Randy G. Thomas employed respondent to file corporate dissolution documents for his companies, Temecula Valley Sheet Metal, Inc. and L.N.L., LLC. Thomas paid respondent \$2,000 in advanced legal fees.

34. On August 5, 2016, respondent sent Thomas an email in which he advised Thomas that an accountant would need to prepare a final tax return for Thomas' corporations. Respondent requested that Thomas notify him once the tax returns had been finalized, after which respondent would prepare the dissolution documents. Thomas received the email.

35. On September 22, 2016, Thomas sent respondent an email in which he notified respondent that tax returns had been finalized for LNL and directed respondent to proceed with the dissolution of LNL. Respondent received the email.

36. On November 22, 2016, Thomas sent respondent an email requesting a status update regarding the dissolution of LNL. Respondent received the e-mail, but did not respond.

37. On January 12, 2017, Thomas sent respondent an email, in which Thomas requested a status update regarding the dissolution of LNL. Respondent received the email, but did not respond.

38. On January 13, 2017, Thomas sent respondent an email, in which Thomas requested a status update regarding the dissolution of LNL. Respondent received the email, but did not respond.

39. On January 20, 2017, Thomas sent respondent an email terminating his services and stating that Thomas had sent respondent numerous emails and left voice messages without a response. Thomas alleged that respondent had performed no work on his matter and requested a refund of the legal fees. Respondent received the email, but did not respond. At no time did respondent provide Thomas with an appropriate accounting.

40. On March 7, 2017, in case number 17-O-00819, a State Bar investigator sent a letter to respondent at respondent's membership records address, requesting a written response by March 21, 2017, to allegations raised by Thomas in a State Bar complaint. Respondent received the letter, but did not respond to the letter or submit a written response to Thomas' complaint.

41. On March 22, 2017, in case number 17-O-00819, a State Bar investigator sent a letter to respondent at respondent's membership records address, requesting a written response to Thomas' allegations by April 5, 2017. Respondent received the letter, but did not respond to the letter or submit a written response to Thomas' complaint.

42. On April 6, 2017, a State Bar investigator sent an email to respondent at respondent's membership records email address, with copies of the letters sent to respondent on March 7, 2017 and March 22, 2017, requesting respondent's written response by April 20, 2017. Respondent received the email, but did not respond to the email or submit a written response to Thomas' complaint.

43. On July 7, 2017, a State Bar investigator sent a fax to respondent at respondent's membership records fax number, requesting a written response to Thomas' allegations by July 14, 2017. Attached to the fax were copies of the State Bar's letters to respondent, dated March 7, 2017 and March 22, 2017. Respondent received the fax, but did not respond to the fax or submit a written response to Thomas' complaint.

CONCLUSIONS OF LAW:

44. By failing to render an appropriate accounting to Thomas of the \$2,000 legal fees collected to dissolve two corporations, upon termination of respondent's employment on January 20, 2017, respondent engaged in a willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

45. By failing to respond promptly to three reasonable status inquiries by Thomas between November 22, 2016 and January 13, 2017, which respondent received, respondent failed to respond to a client's request for a status update in willful violation of Business and Professions Code section 6068(m).

46. 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, emails, and fax, which

requested respondent's response to the allegations of misconduct being investigated in case number 17-O-00819, respondent engaged in a willful violation of Business and Professions Code section 6068(i).

Case No. 17-O-01330 (Complainant: Tyan Nguyen)

FACTS:

47. On June 30, 2016, Tyan Nguyen employed respondent to represent Nguyen's company, E-Teleconnect, Inc., against WiMacTel, in a breach of contract and collection dispute ("E-Teleconnect matter").

48. On July 11, 2016, Nguyen paid respondent \$5,000 in advanced legal fees.

49. On July 22, 2016, respondent sent an email to Nguyen, in which he provided a copy of a settlement offer that respondent had sent to WiMacTel that day. Nguyen received the email.

50. On September 30, 2016, respondent communicated with Nguyen by telephone and discussed the E-Teleconnect matter. Respondent thereafter performed no work on the E-Teleconnect matter.

51. Between October 4 and 8, 2016, Nguyen sent several emails to respondent requesting a status update on the E-Teleconnect matter. Respondent received the emails, but did not respond.

52. Between October 11 and 19, 2016, Nguyen sent several emails to respondent asking when they would be able to move forward with the E-Teleconnect matter. Respondent received the emails, but did not respond.

53. On October 24, 2016, Nguyen sent an email to respondent requesting a status update on the E-Teleconnect matter. Respondent received the email, but did not respond.

54. On November 10, 2016, Nguyen sent respondent an email requesting an accounting. Nguyen stated that he had hired new counsel. Respondent received the email, but did not respond.

55. On December 13, 2016, Nguyen's new attorney sent respondent a letter requesting a refund of unearned fees and an accounting by December 27, 2016. Respondent received the letter, but did not respond or provide an appropriate accounting.

56. On April 5, 2017, in case number 17-O-01330, a State Bar investigator sent a letter to respondent at respondent's membership records address requesting a written response to Nguyen's allegations by April 19, 2017. Respondent received the letter, but did not respond to the letter or submit a written response to Nguyen's complaint.

57. On April 19, 2017, in case number 17-O-01330, a State Bar investigator sent a letter to respondent at respondent's membership records address requesting a written response to Nguyen's allegations by May 3, 2017. Respondent received the letter, but did not respond to the letter or submit a written response to Nguyen's complaint.

58. On June 13, 2017, a State Bar investigator sent an email to respondent at respondent's membership records email address, with copies of the letters sent to respondent on April 5, 2017 and

April 19, 2017, requesting respondent's written response by June 20, 2017. Respondent received the email, but did not respond to the email or submit a written response to Nguyen's complaint.

59. On July 18, 2017, a State Bar investigator sent a fax to respondent at respondent's membership records fax number, requesting a written response to Nguyen's allegations by July 25, 2017 and included copies of the State Bar's previous letters to respondent dated April 5, 2017 and April 19, 2017. Respondent received the fax, but did not respond to the fax or submit a written response to Nguyen's complaint.

CONCLUSIONS OF LAW:

60. By failing to render an appropriate accounting to Nguyen of the \$5,000 legal fees collected for representation in the E-Teleconnect matter, upon constructive termination of respondent's employment on or about September 30, 2016, respondent engaged in a willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

61. By failing to take any action on behalf of Nguyen, a client, after speaking with Nguyen on September 30, 2016, and, thereafter, and thereafter failing to inform Nguyen that respondent was withdrawing from employment, respondent constructively terminated his employment and improperly withdrew from representation of Nguyen, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

62. By failing to respond promptly to several reasonable status inquiries, made by respondent's client, Tyan Nguyen, between October 4, 2016 and October 24, 2016, by email, which respondent received, respondent failed to respond to a client's request for a status update in willful violation of Business and Professions Code section 6068(m).

63. 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, emails, and fax, which requested respondent's written response to the allegations of misconduct being investigated in case number 17-O-01330, respondent engaged in a willful violation of Business and Professions Code section 6068(i).

Case No. 17-O-04201 (State Bar Investigation)

FACTS:

64. On August 7, 2016, the State Bar Court filed a Stipulation Re Facts and Conclusions of Law ("Stipulation") in case numbers 14-O-00247 and 15-O-13013, which had been entered into by respondent and the State Bar, for a one-year stayed suspension and a one-year probation.

65. On December 17, 2016, the California Supreme Court filed its order, S237471, regarding State Bar Court case numbers 14-O-00247 and 15-O-13013, effective January 6, 2017, for a one-year stayed suspension and a one-year probation.

66. Pursuant to the California Supreme Court Order in case numbers 14-O-00247 and 15-O-13013 (S237471), respondent was ordered to comply with the following relevant terms and conditions of probation, among others:

- a. contact the State Bar Office of Probation ("OP") within thirty (30) days from the effective date of discipline, and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of the order; and
- b. submit written quarterly reports to OP on each January 10, April 10, July 10 and October 10 of the period of probation, stating under penalty of perjury whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.

67. On December 28, 2016, OP uploaded to respondent's State Bar membership profile online, a letter to reminding respondent of his probation conditions. OP sent an email to respondent, attaching the December 28, 2016 letter, at respondent's membership record email address. Respondent received the email.

68. Respondent failed to schedule or participate in a required meeting with his probation deputy by February 5, 2017.

69. Respondent failed to submit a quarterly report to OP, which was due on April 10, 2017.

70. On May 4, 2017, OP mailed respondent a letter, notifying respondent of his non-compliance with his probation conditions. The letter was mailed to respondent's membership records address. A copy of this letter was also sent to respondent in an email at his membership record email address. Respondent received the letter and email, but did not respond.

71. To date, respondent has not filed quarterly reports which were due on April 10, 2017, July 10, 2017 and October 10, 2017.

CONCLUSIONS OF LAW:

72. By failing to schedule a meeting with OP within 30 days from the effective date of respondent's discipline and failing to submit three quarterly reports, respondent failed to comply with the conditions of his disciplinary probation, in willful violation of Business and Professions Code section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has two prior records of discipline.

Effective January 6, 2017, in State Bar Case numbers 14-O-00247 and 15-O-13013, the Supreme Court 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. (See attached certified copy of Supreme Court Order and Stipulation re Facts, Conclusions of Law and Disposition and Order Approving, in State Bar case numbers 14-O-00247 and 15-O-13013, attached as Exhibit 1.) The parties stipulate that Exhibit 1, attached, is a true and correct copy of respondent's first prior record of discipline. In these matters, respondent stipulated that he failed to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct, failed to render an appropriate 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 between 2013 and 2015. Respondent's misconduct was

mitigated by the absence of a prior record of discipline over 15 years of practice and entry into a pretrial stipulation, and aggravated by multiple acts of misconduct and significant harm.

Effective August 30, 2017, in State Bar Case numbers 16-O-13856 and 16-O-11725, the Supreme Court 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 including a 90-day actual suspension. (See attached certified copy of Supreme Court Order and Stipulation re Facts, Conclusions of Law and Disposition and Order Approving, in State Bar case numbers 16-O-13856 and 16-O-11725, attached as Exhibit 2.) The parties stipulate that Exhibit 2, attached, is a true and correct copy of respondent's second prior record of discipline. In this matter, respondent stipulated that he engaged in the unauthorized practice of law in violation of Business and Professions Code sections 6068(a), 6125, 6126 and 6106, failed to cooperate in a State Bar investigation in violation of Business and Professions Code section 6068(i) and failed to render an appropriate accounting to a client in violation of rule 4-100(B)(3) of the Rules of Professional Conduct. The misconduct occurred between 2015 and 2016. Respondent's misconduct was mitigated by entry into a pretrial stipulation and aggravated by multiple acts of misconduct.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's misconduct involves 18 multiple acts of professional misconduct in three client matters, including failures to perform, client abandonment, failures to release client files, failures to account, engaging in the unauthorized practice of law, failures to cooperate in State Bar investigations and multiple acts of non-compliance with respondent's disciplinary probation.

Indifference (Std. 1.5(k)): Despite being disciplined for failing to perform legal services in his prior disciplines, case numbers 14-O-00247 and 15-O-13013, in the instant case respondent continued to engage in similar misconduct in case numbers 16-O-17468, 17-O-00819 and 17-O-01330. Respondent remains out of compliance with his disciplinary probation from case numbers 14-O-00247 and 15-O-13013.

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 resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re 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 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).)

The most severe standard applicable here is Standard 1.8(b), which provides that if a member has two or more prior record of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same period as the current misconduct:

1. Actual suspension was ordered in any one of the prior disciplinary matters;
2. The prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or
3. The prior disciplinary matters coupled with the current record demonstrate the member’s unwillingness or inability to conform to ethical responsibilities.

Here, respondent’s second and most recent record of discipline involved a 90-day actual suspension. As stated above, respondent’s instant misconduct involves similar misconduct from his prior discipline, which demonstrates respondent’s unwillingness and inability to conform to his ethical responsibilities. Respondent remains out of compliance with the probation conditions from his prior discipline. His failure to cooperate in a State Bar investigation and failure to file a quarterly report due on October 10, 2017 in cases 17-O-01330 and 17-O-04201, respectively, occurred after both of respondent’s prior disciplines became effective, and shows he is not amenable to probation. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) In the absence of compelling mitigation, disbarment, pursuant to Standard 1.8(b), is appropriate. Respondent failed to perform in two client matters, engaged in the unauthorized practice of law, failed to give an accounting in three client matters, failed to communicate in three client matters, failed to return client files and failed to cooperate in three State Bar investigations. More recently, he failed to participate in his disciplinary probation from his first prior discipline. Respondent’s misconduct is aggravated by his two prior records of discipline, multiple acts and indifference, and mitigated by entry into a pretrial stipulation. Respondent’s misconduct is aggravated by his prior records of discipline, multiple acts, and indifference, and mitigated by entry into a pretrial stipulation. On balance, the aggravation outweighs the mitigation. Therefore, disbarment is appropriate here for respondent’s third disciplinary matter and to serve the purposes of discipline.

Case law supports this level of discipline. In *Barnum v. State Bar* (1990) 52 Cal.3d 104, the attorney was disbarred for collecting an unconscionable fee, willfully disobeying court orders and failing to participate in the disciplinary investigation. The attorney had previously been disciplined with a stayed

suspension, after which he was suspended for failing to pass the Multistate Professional Responsibility Examination. Thereafter the attorney's probation was revoked for failure to submit a quarterly report. After defaulting in the probation revocation proceeding, actual suspension of one year was imposed against respondent. In imposing disbarment, the Supreme Court relied on Standard 1.7(b), the predecessor to current Standard 1.8(b), due to the attorney's three prior impositions of discipline and the absence of compelling mitigating circumstances. The Supreme Court ordered that the attorney be disbarred on the basis that there was no reason to believe that the attorney would comply with a less severe sanction as evidenced by his prior failures to comply with probation. (*Id.* at p. 112.)

Like in *Barnum*, respondent has engaged in probation violations and performance violations after prior disciplines. Like *Barnum*, respondent has had a significant period of actual suspension in his prior discipline. However, respondent, like *Barnum*, has demonstrated that another period of probation will be ineffective in ensuring future compliance with ethical obligations as respondent has failed to cooperate in three State Bar investigations and failed to participate with his disciplinary probation. Respondent's "poor performance on probation" is an indication that disbarment is the appropriate level of discipline. (*Id.* at p. 152.)

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-17468	SIX	Rules of Professional Conduct, rule 3-700(D)(2) (Failure to Refund Unearned Fees)
17-O-00819	TEN	Rules of Professional Conduct, rule 3-700(D)(2)
17-O-01330	FOURTEEN	Rules of Professional Conduct, rule 3-700(D)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.

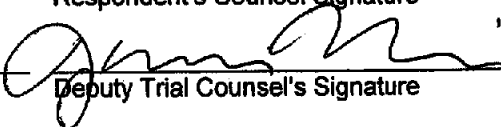
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 6, 2017, the discipline costs in this matter are \$3,758. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: MICHAEL WILLIAM NEWCOMB	Case number(s): 16-O-17468-YDR, 17-O-00819, 17-O-01330, 17-O-04201
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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.

_____	_____	Michael William Newcomb
Date	Respondent's Signature	Print Name
_____	_____	_____
Date	Respondent's Counsel Signature	Print Name
12/7/2017		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-17468-YDR, 17-O-00819, 17-O-01330, 17-O-04201
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DISBARMENT 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.)**

Respondent Michael William Newcomb is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

December 15, 2017
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

PUBLIC MATTER

ORIGINAL

<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): 14-O-00247-WKM; 15-O-13013</p>	<p>For Court use only</p> <p>FILED AUG 03 2016 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: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO 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".

(Effective July 1, 2016)

(Do not write above this line.)

- (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):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - 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
 - (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 or a separate attachment entitled "Prior Discipline."
- (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..
- (8) Harm: Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See attachment, page 10.

(Do not write above this line.)

- (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(l) & 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.

(Do not write above this line.)

- (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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

No Prior Record of Discipline, see attachment, page 10.
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:

The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent is 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.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.

(Do not write above this line.)

- (4) 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.

- (5) 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.
- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **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) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL WILLIAM NEWCOMB

CASE NUMBERS: 14-O-00247; 15-O-13013-WKM

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. 14-O-00247 (Complainant: Susan Holenstein)

FACTS:

1. On May 16, 2013, Susanne Holenstein hired respondent to advise and assist with the formation of one California Limited Liability Company ("LLC") and two out of state LLCs, as well as assist with the transfer of various properties into entities, and to form a living trust and advanced healthcare directives. Respondent was paid \$7,000 for these services, \$1,800 of which was to form a California LLC.
2. On July 3, 2013, Holenstein spoke with respondent, who advised her that the trust would be completed in two to three weeks.
3. On December 7, 2013, Holenstein sent a certified letter to respondent terminating his services and requesting a full refund. Respondent received the letter.
4. On December 17, 2013, Holenstein made a State Bar complaint against respondent, in Case No. 14-O-00247, alleging misconduct consisting of failing to perform legal services as to the California LLC, the out of state LLC, the living trust and advanced healthcare directive, and failing to issue a refund.
5. Respondent responded to the State Bar complaint in a letter dated June 5, 2014, by stating that he sent a copy of the trust to Holenstein on July 26, 2013, and a follow up letter on December 5, 2013. These letters were sent to Holenstein's physical address, as opposed to Holenstein's P.O. Box. Holenstein maintained that she never received these letters. Respondent thereafter completed the trust documents and drafted the Articles of Organization ("AOO") for a California LLC named Kalmia ("Kalmia").
6. On June 12, 2014, Holenstein sent an e-mail to a State Bar investigator stating that she had met with respondent that day. Holenstein stated that during their meeting, both her trust documents and AOO for Kalmia were completed, after which respondent stated that he would file the AOO within two to three weeks. Respondent also refunded \$2,700 to Holenstein for not performing work as to the out of state LLC, pursuant to Holenstein's request. The State Bar thereafter closed Holenstein's State Bar complaint by issuing respondent a warning letter regarding a violation of Business and Professions Code section 6068(m) for failure to respond to client inquiries.

7. On June 19, 2014, Holenstein sent respondent an e-mail inquiring as to whether the AOO for Kalmia had been filed. Respondent received the e-mail, but did not respond to the e-mail.

8. On September 9, 2014, Holenstein sent respondent an e-mail notifying him that she had not received any documentation from the State of California indicating that he had filed the AOO for Kalmia. She advised respondent that she would contact the State Bar and request that her complaint be reopened if he did not respond within three days. Respondent received the e-mail, but did not respond to the e-mail.

9. On March 18, 2015, a State Bar investigator sent a letter to respondent at his prior State Bar membership records address, located at 43460 Ridgemark Drive, Suite 200, Temecula, CA 92590, as well as an additional address, located at P.O. Box 1105, Temecula, CA 92593, advising him that State Bar case no. 14-O-00247 had been reopened. Respondent received the letter.

10. On July 15, 2015, Holenstein informed the State Bar investigator that respondent had drafted documents for the California LLC, but failed to file the documents.

11. On July 26, 2015, Holenstein sent an e-mail to respondent requesting a refund of \$1,800 for not completing the work regarding Kalmia. Respondent received the e-mail, but did not respond to the e-mail. Respondent did not provide Holenstein with a refund or accounting.

CONCLUSIONS OF LAW:

12. By failing to file the Articles of Organization for Kalmia with the Secretary of State on behalf of Holenstein, a client, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

13. By failing to render an appropriate accounting of advanced legal fees to Holenstein, a client, upon the client's request on July 26, 2015, respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 15-O-13013 (Complainant: Audrey Cilurzo)

FACTS:

14. On April 8, 2014, defendant Audrey Cilurzo ("Audrey") employed respondent to defend her and her husband, defendant Vincent Cilurzo ("Vincent"), in *Cziraki v. Cilurzo, et al.*, case number MCC1300007, in the Riverside County Superior Court ("the civil matter"). Respondent was paid a fee of \$15,000. There was no written legal services agreement.

15. On May 15, 2014, respondent filed a Demurrer to Plaintiff's First Amended Complaint in the civil matter on behalf of Audrey and Vincent on the grounds that the First Amended Complaint was barred by the applicable statute of limitations.

16. On June 10, 2014, the court sustained the demurrer in the civil matter for defendants Audrey and Vincent ("the Cilurzoses"), and the plaintiffs were given 30 days leave to amend the First Amended Complaint.

17. On July 10, 2014, the plaintiffs filed and served a Second Amended Complaint in the civil matter. Respondent received the Second Amended Complaint

18. On July 15, 2014, respondent e-mailed Audrey a copy of the Second Amended Complaint filed by the plaintiffs.

19. On September 10, 2014, respondent filed and served a Demurrer to the Second Amended Complaint in the civil matter, on behalf of the Cilurzos, on the grounds that the complaint was barred by the applicable statute of limitations.

20. On September 10, 2014, plaintiffs Cziraki, filed and served an opposition to the Cilurzos' Demurrer to the Second Amended Complaint. Respondent received the opposition.

21. On September 17, 2014 respondent filed and served a reply to the opposition, in support of the defendants' Demurrer to the Second Amended Complaint.

22. On September 24, 2014, respondent was present in court at a hearing regarding the demurrer to the Second Amended Complaint. The demurrer was overruled and the court gave the Cilurzos 30 days leave to file an answer to the Second Amended Complaint. Respondent never filed an answer on behalf of the Cilurzos.

23. On September 26, 2014, respondent e-mailed Audrey advising her that the court had overruled their demurrer, and that respondent would file a writ of mandate with the Court of Appeals to have the Superior Court's ruling on the demurrer reversed. Audrey received the e-mail.

24. On October 17, 2014, the Cilurzos paid respondent an additional \$15,000, pursuant to respondent's request, for advanced legal fees for the writ of mandate.

25. On October 22, 2014, a Petition for Writ of Mandate was filed in the Fourth Appellate District, Division of the California Court of Appeals, by respondent on behalf of the Cilurzos, seeking to reverse the ruling by the Riverside County Superior Court on the demurrer to the Second Amended Complaint.

26. On December 9, 2014, a case management conference hearing was held in the Riverside County Superior Court in the civil matter, but respondent was not present for the hearing. The court issued, in light of Audrey's pending writ of mandate, a Notice of Status Conference and Order to Show Cause ("OSC") re: Failure to File Responsive Pleadings, setting a hearing for March 9, 2015. The Notice of Status Conference and Order to Show Cause was filed and served by plaintiff's counsel, David Demergian ("Demergian"), in Riverside County Superior Court on December 9, 2014. Respondent received the Notice of Status Conference and OSC re: Failure to file Responsive Pleadings.

27. On December 15, 2014, the California Court of Appeals issued an order denying the Cilurzos' Petition for Writ of Mandate and served respondent at his State Bar membership records address. Respondent received the order, but did not notify Audrey or Vincent of this development.

28. On January 26, 2015, plaintiff Cziraki filed and served respondent with a Request for Entry of Default Judgment against the Cilurzos in the civil matter. Respondent received the Request for Entry of Default Judgment.

29. On January 26, 2015, the court entered default against the Cilurzos in the civil matter. Respondent was served at his State Bar membership records address and received the plaintiff's default against the Cilurzos.

30. On February 2, 2015, respondent sent an e-mail to opposing counsel Demergian at david@demergianlaw.com, in which he represented that he had attempted to file an Answer to the Second Amended Complaint via mail on January 13, 2015, and enclosed a copy.

31. On February 3, 2015, Demergian responded to respondent's e-mail noting that default had already been entered. Respondent received the e-mail.

32. On February 3, 2015, respondent sent an e-mail to Demergian asking if Demergian would stipulate to set aside the default. Respondent also offered to prepare the stipulation. Demergian replied via e-mail that same day that he would agree to stipulate to set aside the default. Respondent received the e-mail.

33. On March 9, 2015, the status conference and OSC re: Failure to file Responsive Pleadings was held in the civil matter in Riverside County Superior Court, but respondent was not present for the hearing. The court scheduled a case management conference for May 7, 2015 with notice to be given by plaintiff's counsel. Plaintiff's counsel served respondent with notice of the May 7, 2015 case management conference which respondent received.

34. On March 18, 2015, Audrey's adult son Vinnie Cilurzo ("Vinnie"), sent an e-mail to respondent stating that Audrey had e-mailed and called respondent requesting a status update in the civil matter, but that she had not received a response. Vinnie asked that respondent send Audrey a status update and an accounting. Respondent replied to the e-mail stating that he would send the requested information the following day. Respondent did not respond thereafter.

35. On March 30, 2015, Audrey's son Steven Cilurzo ("Steven") sent an e-mail to Audrey stating that he had just spoken with respondent by telephone who had informed him that the Writ of Mandate had been denied more than two months ago.

36. On March 30, 2015, Vinnie's attorney, Don Winkle ("Winkle"), sent an e-mail to respondent at Michael@newcomb-law.com, requesting a status update on Audrey's case per Vinnie's request.

37. On April 2, 2015, respondent e-mailed Winkle at donwinkle@smlaw.com, and carbon copied Audrey, Vinnie and Audrey's new attorney, Karin Beam ("Beam"), stating that he would respond once he returned to his office.

38. On April 3, 2015, respondent e-mailed Winkle, Audrey, Vinnie and Beam representing that he had prepared a stipulation to set aside default and would obtain signatures on the stipulation and file a motion to set aside the default by the following week. Audrey received respondent's e-mail.

39. On April 15, 2015, Beam, faxed a letter to respondent notifying him that she was now representing Audrey and Vincent and requesting that respondent release the original client file. Respondent received the letter, but did not respond to the letter.

40. On April 30, 2015, a Substitution of Attorney was filed in the civil matter, substituting Beam in as counsel for the Cilurzos in place of respondent, which was signed by both attorneys. Respondent's signature was dated April 28, 2015.

41. From April 15, 2015 to July 16, 2015, Teresa Ramirez, Beam's assistant, and Michelle Fletcher, Beam's paralegal, sent respondent seven e-mails asking for Audrey's client file. Respondent received the e-mails, but did not provide Audrey or Beam's office with Audrey's client file.

CONCLUSIONS OF LAW:

42. By failing to inform Audrey Cilurzo, a client, of the Court of Appeal's denial of her writ of mandate, and waiting until three months had elapsed to inform Audrey Cilurzo that the Riverside County Superior Court had entered a default judgment against her, respondent failed to keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

43. By failing to promptly release releasing after termination of respondent's employment on April 15, 2015, to Audrey Cilurzo or the office of Karin Beam, Audrey Cilurzo's new attorney, all of the client's papers and property following requests for the file between April 15, 2015 and July 16, 2015, respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's misconduct involves multiple acts of professional misconduct in two different client matters, including failure to inform a client of significant developments, failure to render accounts of client funds, failure to perform legal services and failure to release a client file.

Harm (Std. 1.5(j)): Respondent's misconduct in case number 15-O-13013 caused significant harm to a client as the client, Hostenstein, was required to employ a new attorney after respondent's failure to perform services.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice on June 5, 1997. At the time of the misconduct, respondent had practiced law for 15 years without a record of discipline. While respondent's conduct is serious, he is entitled to significant mitigation for practicing for a significant period of time without a record of discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [gave attorney significant weight in mitigation for practicing law for over ten years without misconduct]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [discipline-free practice considered to be a significant mitigating factor even when misconduct is serious].)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged his misconduct and saved the State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 1.7(a) further provides that, “If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Here, respondent has committed multiple acts of misconduct in two different client matters.

In the Holenstein matter, respondent failed to render an accounting of advanced attorney’s fees and failed to render competent legal services. In the Cilirzo matter, respondent failed to return a client file and did not inform the client of significant developments.

The applicable Standards are Standard 2.2(b) for respondent’s failure to account and Standard 2.7(c) for respondent’s failure to perform and inform a client of significant developments, which was limited to two matters during a time period covering June 2014 to April 2015. Both Standards provide for a suspension or reproof. Respondent’s misconduct is mitigated by his 15 years of discipline free practice, which is significant, and pretrial stipulation, and aggravated by his multiple acts and harm. On balance, the mitigation outweighs the aggravation. Therefore, a one-year stayed suspension is appropriate to serve the purposes of discipline.

Case law supports this level of discipline. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the California Supreme Court ordered that the attorney be actually suspended for 30 days in a first time discipline case for failing to perform legal services, failing to respond to client communications, withdrawing improperly, failing to refund and failing to cooperate in a State Bar investigation. The attorney had represented the client in an uncontested marital dissolution for nearly three years before attempting to withdraw after failing to communicate with the client for months at a time and failing to obtain a

judgment. The attorney then did not participate in fee arbitration and did not respond to the State Bar's numerous requests for a response to the allegations of misconduct. At the time of the misconduct, the attorney had been a member of the State Bar 22 years with no prior record of discipline. Bach displayed indifference and caused client harm.

Like the attorney in *Bach*, this is respondent's first disciplinary matter after a significant period of discipline free practice. Respondent also did not inform his client of significant developments. Unlike *Bach*, respondent did not fail to refund fees, abandon a client or fail to cooperate in a State Bar investigation. However, respondent's misconduct occurred in two, as opposed to one, client matter, and respondent failed to render an accounting. Unlike *Bach*, the misconduct here did not span a period of several years. Respondent also has significant mitigation for no prior record of discipline. The discipline here should be less severe than in *Bach* as respondent engaged in less misconduct. Therefore, a one-year stayed suspension is appropriate to protect the public, courts, and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

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>
14-O-00247	Three	Business and Professions Code section 6068(m)
15-O-13013	Four	Rules of Professional Conduct, rule 3-110(A)

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

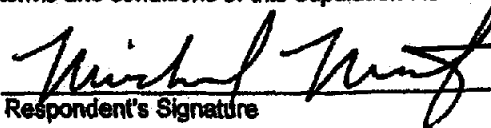
Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of discipline. (Rules Proc. of State Bar, rule 3201.)

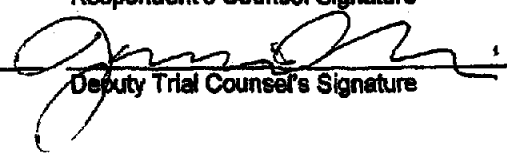
(Do not write above this line.)

In the Matter of: MICHAEL WILLIAM NEWCOMB	Case number(s): 14-O-00247; 15-O-13013-WKM
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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.

8-4-2016  Michael William Newcomb
Date Respondent's Signature Print Name

8/5/2016  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): 14-O-00247, 15-O-13013-WKM
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STAYED 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.

1. On page 7 of the Stipulation, at numbered paragraph 12, line 2, "and by failing to respond to Hostenstein's June 19, 2014, and September 9, 2014, emails" is inserted between "client," and "respondent".
2. On page 10 of the Stipulation, "No Prior Discipline," line 2, "15" is deleted, and in its place is inserted "17".
3. On page 11 of the Stipulation, paragraph 6, line 4, "15" is deleted, and in its place is inserted "17".

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.)

August 9, 2016
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
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 August 9, 2016, 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 August 9, 2016.

Paul Barona

Paul Barona
Case Administrator
State Bar Court

1 Michael W. Newcomb, Esq. (Bar No. 188321)
Newcomb Law Group
2 45089 Vine Cliff Street
Temecula, CA 92592
3 Tel: (951) 541-0220
Fax: (951) 541-9360
4 Email: michael@newcomb-law.com

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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

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**STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

10 In the Matter of:

Case No.: 14-O-00247, 15-O-13013

11 vs.

**ANSWER TO
DISCIPLINARY CHARGES**

12 MICHAEL W. NEWCOMB,

13 No. 188321
14
15

16 Respondent, MICHAEL W. NEWCOMB (hereafter, "NEWCOMB"), answers/responds to the
17 Notice of Disciplinary Charges as follows.

18 **COUNT ONE**

19 Case No. 14-O-00247

20 1. **DENIED**. NEWCOMB prepared articles of organization, Holenstein executed said articles
21 and the articles were submitted to the California Secretary of State.

22 **COUNT TWO**

23 Case No. 14-O-00247

24 2. **DENIED**. NEWCOMB provided Holenstein with an accounting and refunded funds for an
25 LLC that the client elected not to form.
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COUNT THREE

Case No. 14-O-00247

3. **DENIED**. NEWCOMB alleges that he either did not receive the status requests and/or provided an adequate response.

COUNT FOUR

Case No. 15-O-13013

4. **DENIED**. NEWCOMB prepared an Answer to the Second Amended Complaint, the Answer was not filed due to inadvertence and mistake, but in any case, Counsel for the plaintiffs had agreed to stipulate to set aside the default and a motion to set aside was unnecessary. Newcomb was substituted out as counsel before the stipulation was prepared.

COUNT FIVE

Case No. 15-O-13013

5. **DENIED**. NEWCOMB alleges that the client was informed of the Court of Appeals ruling in a timely manner.

COUNT SIX

Case No. 15-O-13013

6. **DENIED**. NEWCOMB provided the new attorneys with copies of his file prior to and following substitution has counsel of record.

Dated: June 1, 2016.

By:


Michael W. Newcomb

Name: In Re Matter of Michael William Newcomb

Case No. 14-O-00247, 15-O-13013

PROOF OF SERVICE

I, the undersigned, declare that I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of the County of Riverside, State of California; my business address is 45089 Vine Cliff Street, Temecula, CA 92592.

On June 3, 2016, I served the following document(s):

NEWOMB'S ANSWER

By regular mail delivery to the addresses set forth below:

State Bar Court of California
Department D
845 S. Figueroa Street
Los Angeles, CA 90017-2515

Jamie J. Kim, DTC
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017-2515

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 3, 2016



KELLY A. NEWCOMB

1 STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
2 JAYNE KIM, No. 174614
CHIEF TRIAL COUNSEL
3 GREGORY P. DRESSER, No. 136532
ACTING DEPUTY CHIEF TRIAL COUNSEL
4 JOHN T. KELLEY, No. 193646
ACTING ASSISTANT CHIEF TRIAL COUNSEL
5 MICHAEL J. GLASS, No. 102700
SUPERVISING SENIOR TRIAL COUNSEL
6 JAMIE KIM, No. 281574
DEPUTY TRIAL COUNSEL
845 South Figueroa Street
7 Los Angeles, California 90017-2515
Telephone: (213) 765-1182
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FILED

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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13 In the Matter of:
14 MICHAEL WILLIAM NEWCOMB,
No. 188321,
15
16 A Member of the State Bar.

Case No. 14-O-00247; 15-O-13013
NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

17
18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- 19
20 (1) **YOUR DEFAULT WILL BE ENTERED;**
21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
22 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
23 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
24 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
25 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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The State Bar of California alleges:

JURISDICTION

1. MICHAEL WILLIAM NEWCOMB ("respondent") was admitted to the practice of law in the State of California on June 5, 1997, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 14-O-00247
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. On or about May 16, 2013, Susanne Holenstein employed respondent to perform legal services, namely to prepare and file articles of organization for a California Limited Liability Corporation, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by not filing articles of organization for the client's proposed California Limited Liability Corporation.

COUNT TWO

Case No. 14-O-00247
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

3. On or about May 16, 2013, respondent received on behalf of his client, Susanne Holenstein, the sum of \$7,000 as advanced fees for legal services to be performed. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following the client's request for a refund of unearned fees on July 26, 2015, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

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COUNT THREE

Case No. 14-O-00247
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

4. Respondent failed to respond promptly to two written reasonable status inquiries, sent via e-mail by respondent's client, Susanne Holenstein, on June 19, 2014 and September 9, 2014, that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

COUNT FOUR

Case No. 15-O-13013
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

5. On or about April 8, 2014, Audrey Cilurzo and Vincent Cilurzo employed respondent to defend them in a civil action entitled *Cziraki v. Cilurzo*, Riverside County Superior Court, case number MCC1300007, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by not filing an answer in response to a second amended complaint filed against defendants Audrey Cilurzo and Vincent Cilurzo and not filing a motion to set aside a default judgment.

COUNT FIVE

Case No. 15-O-13013
Business and Professions Code, section 6068(m)
[Failure to Keep Client Informed of Significant Developments]

6. Respondent failed to keep respondent's client, Audrey Cilurzo, reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m), by failing to inform the client of the December 15, 2014, order issued by the California Court of Appeals in the matter of *Cziraki v. Cilurzo*, case number MCC1300007, denying the client's writ of mandate and the

1 January 26, 2015 entry of default against respondent's client in the matter of *Cziraki v. Cilurzo*,
2 Riverside County Superior Court, case number MCC1300007.

3
4 COUNT SIX

5 Case No. 15-O-13013
6 Rules of Professional Conduct, rule 3-700(D)(1)
7 [Failure to Release File]

8 7. Respondent failed to release promptly, after termination of respondent's employment
9 on April 15, 2015, to the new attorney for respondent's clients, Audrey Cilurzo and Vincent
10 Cilurzo, all of the clients' papers and property following the new attorney's request for the
11 clients' file on April 15, 2015, May 1, 2015, June 22, 2015, July 1, 2015, July 13, 2015 and July
12 16, 2015, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).
13

14 NOTICE - INACTIVE ENROLLMENT!

15 YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
16 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
17 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
18 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
19 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
20 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
21 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
22 RECOMMENDED BY THE COURT.
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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: 9/21/2016

By: 
Jamie Kim
Deputy Trial Counsel

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DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-O-00247; 15-O-13013

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 945 South Figueroa Street, Los Angeles, California 90017, declare that:

on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 9414 7286 9904 2010 0725 60 at Los Angeles, addressed to: (see below)

(for Ground Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: MICHAEL W. NEWCOMB, Michael W Newcomb, Attorney at Law, 45089 Vine Cliff St, Temecula, CA 92592.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS).

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: April 21, 2016

SIGNED:

Handwritten signature of Laura Jett and printed name LAURA JETT, Declarant.

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.



ATTEST October 31, 2017

State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

(State Bar Court Nos. 16-O-11725 (16-O-13856))

S241767

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED

En Banc

JUL 31 2017

In re MICHAEL WILLIAM NEWCOMB on Discipline **Jorge Navarrete Clerk**

The court orders that Michael William Newcomb, State Bar Number 188521, ^{Deputy} is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for one year subject to the following conditions:

1. Michael William Newcomb is suspended from the practice of law for the first 90 days of probation;
2. Michael William Newcomb must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on March 24, 2017; and
3. At the expiration of the period of probation, if Michael William Newcomb has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Michael William Newcomb must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with his membership fees for each of the years 2018, 2019, and 2020. If Michael William Newcomb 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.
Witness my hand and the seal of the Court this

day of JUL 31 2017 20

By: 

Deputy

CANTIL-SAKAUYE

Chief Justice

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182 Bar # 281574	Case Number(s): 16-O-11725-CV 16-O-13856	For Court use only FILED MAR 24 2017 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Michael William Newcomb 45089 Vine Cliff St. Temecula, CA 92592 (951) 541-0220 Bar # 188321	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: MICHAEL WILLIAM NEWCOMB Bar # 188321 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 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".

(Do not write above this line.)

- (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.

(Do not write above this line.)

- (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.

(Do not write above this line.)

- (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:

(Do not write above this line.)

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:

(Do not write above this line.)

- | | |
|---|---|
| <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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL WILLIAM NEWCOMB

CASE NUMBERS: 16-O-11725, 16-O-13856-CV

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-11725 (State Bar Investigation)

FACTS:

1. On April 8, 2013, an arbitrator from the Riverside County Bar Association Fee Arbitration Program filed a fee arbitration award, requiring respondent to refund \$4,300 to two former clients. The award was binding pursuant to a written agreement between respondent and the clients. The award was served on respondent on April 30, 2013. Respondent received the award.

2. On November 2, 2015, in State Bar Court Case No. 15-AE-15283, a presiding arbitrator from the State Bar of California's Mandatory Fee Arbitration Program properly served an involuntary inactive enrollment motion on respondent at his membership record address at the time by certified mail. The motion for inactive enrollment was filed with the State Bar Court on November 3, 2015, due to respondent's failure to comply with the April 8, 2013, fee arbitration award. Respondent received the motion.

3. On December 17, 2015, the Hearing Department of the State Bar Court filed an Order of Involuntary Inactive Enrollment as to respondent, which became effective on December 22, 2015. Pursuant to the order, respondent was involuntarily enrolled on inactive status with the State Bar of California for failure to pay a fee arbitration award. The order was served on respondent that same day at his membership records address. Respondent received the order. Respondent remained on inactive status until March 7, 2016.

4. On February 18, 2016, respondent knowingly appeared at a court hearing in a civil matter as counsel for defendant Daragh Matheson, in *GCFS v. Daragh Matheson*, in Riverside County Superior Court, Case No. TEC 1102144, in spite of his inactive status. At this time, the court received notification of respondent's inactive status from opposing counsel after the hearing that day had begun. The court then advised respondent of his inactive status with the State Bar. After bringing this information to respondent's attention, respondent then informed the court that he no longer wanted to participate in the hearing.

5. On March 25, 2016, a State Bar Investigator sent a 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 8, 2016. The letter was not returned as undeliverable or for any other reason. Respondent failed to provide a response.

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 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 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 reproval 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.

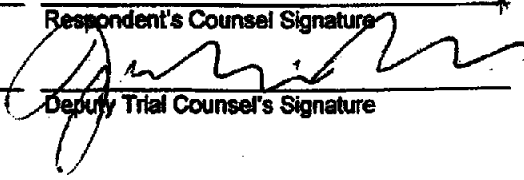
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In the Matter of: MICHAEL WILLIAM NEWCOMB	Case number(s): 16-O-11725, 16-O-13856-CV
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SIGNATURE OF THE PARTIES

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

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

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

1 Michael W. Newcomb, Esq. (Bar No. 188321)
2 Newcomb Law Group
3 45089 Vine Cliff Street
4 Temecula, CA 92592
5 Tel: (951) 541-0220
6 Fax: (951) 541-9360
7 Email: michael@newcomb-law.com

8 Pro Per

FILED
JAN 03 2017
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

*JTC J. K. Finnegan
in Court.*

9 **STATE BAR COURT**
10 **HEARING DEPARTMENT - LOS ANGELES**

11 In the Matter of:
12 vs.
13 MICHAEL W. NEWCOMB,
14 No. 188321

Case No.: 16-O-11725, 16-O-13856
**ANSWER TO
DISCIPLINARY CHARGES**

15
16 Respondent, MICHAEL W. NEWCOMB (hereafter, "NEWCOMB"), answers/responds to the
17 Notice of Disciplinary Charges as follows.

18 **COUNT ONE**

19 **Case No. 16-O-11725**

20 1. **DENIED.** NEWCOMB was unaware, at the time of the appearance, that he had been
21 administratively suspended. The first NEWCOMB learned of this suspension was at the appearance
22 on February 18, 2016.

23 **COUNT TWO**

24 **Case No. 16-O-11725**

25 2. **DENIED.** NEWCOMB was unaware, at the time of the appearance, that he had been
26 administratively suspended. The first NEWCOMB learned of this suspension was at the appearance
27 on February 18, 2016.

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COUNT THREE

Case No. 16-O-11725

3. **DENIED.** NEWCOMB self-reported and informed the State Bar on or about February 18, 2016 and February 19, 2016, of the incident and later informed State Bar attorney Jamie Kim of said incident during a settlement conference. Newcomb's sole defense is that he was unaware and completely oblivious of the administrative suspension.

COUNT FOUR

Case No. 16-O-13856

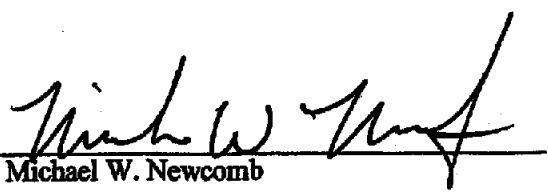
4. **DENIED.** NEWCOMB mailed a refund check to Thomas Zdanowski on or about June 6, 2016.

COUNT FIVE

Case No. 16-O-13856

5. **DENIED.** NEWCOMB mailed a refund check to Thomas Zdanowski on or about June 6, 2016.

January 3, 2017
Dated: ~~December 19, 2016:~~

By: 
Michael W. Newcomb

1 STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
2 GREGORY P. DRESSER, No. 136532
INTERIM CHIEF TRIAL COUNSEL
3 MELANIE J. LAWRENCE, No. 230102
ACTING DEPUTY CHIEF TRIAL COUNSEL
4 JOHN T. KELLEY, No. 193646
ASSISTANT CHIEF TRIAL COUNSEL
5 MICHAEL J. GLASS, No. 102700
SUPERVISING SENIOR TRIAL COUNSEL
6 JAMIE KIM, No. 281574
DEPUTY TRIAL COUNSEL
7 845 South Figueroa Street
Los Angeles, California 90017-2515
8 Telephone: (213) 765-1182

PUBLIC MATTER

FILED

NOV 18 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

9
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11
12
13 In the Matter of:

) Case No. 16-O-11725, 16-O-13856

14 MICHAEL WILLIAM NEWCOMB,
No. 188321,

) NOTICE OF DISCIPLINARY CHARGES

15
16 A Member of the State Bar.

NOTICE - FAILURE TO RESPOND!

17
18 IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
19 THE STATE BAR COURT TRIAL:

- 20 (1) YOUR DEFAULT WILL BE ENTERED;
21 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;
22 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
23 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
24 OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
25 FURTHER HEARING OR PROCEEDING. SEE RULE 5.30 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

26 ///

27 ///

28

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Michael William Newcomb ("respondent") was admitted to the practice of law in the
4 State of California on June 5, 1997, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 16-O-11725
8 Business and Professions Code, section 6068(a)
9 [Failure to Comply With Laws – Unauthorized Practice of Law]

10 2. On or about February 18, 2016, respondent held himself out as entitled to practice law
11 and actually practiced law when respondent was not an active member of the State Bar by
12 appearing in Riverside County Superior Court in a civil matter to represent defendant, Daragh
13 Matheson in GCFS v. Daragh Matheson, in Case No. TEC 1102144, in violation of Business and
14 Professions Code, sections 6125 and 6126, and thereby willfully violated Business and
15 Professions Code, section 6068(a).

16 COUNT TWO

17 Case No. 16-O-11725
18 Business and Professions Code, section 6106
19 [Moral Turpitude]

20 3. On December 17, 2015, in *In the Matter of Newcomb*, State Bar Case No. 15-AE-
21 15283-WKM, the State Bar Court served respondent at his membership records address, 32823
22 Temecula Pkwy., Temecula, CA 92592, with an order enrolling him inactive for failure to pay a
23 fee arbitration award, effective December 22, 2015. Respondent received the order. On or about
24 February 18, 2016, while on inactive status, respondent held himself out as entitled to practice
25 law and actually practiced law when respondent was grossly negligent in not knowing that
26 respondent was not an active member of the State Bar, by making an appearance in Riverside
27 County Superior Court at a court hearing as counsel for the defendant, Daragh Matheson, in a

1 civil matter entitled *GCFS v. Daragh Matheson*, Riverside County Superior Court Case No. TEC
2 1102144, despite having received the December 22, 2015 order enrolling respondent inactive,
3 and thereby committed an act involving moral turpitude, dishonesty or corruption in willful
4 violation of Business and Professions Code, section 6106.

5
6 COUNT THREE

7 Case No. 16-O-11725
8 Business and Professions Code, section 6068(i)
9 [Failure to Cooperate in State Bar Investigation]

10 4. Respondent failed to cooperate and participate in a disciplinary investigation pending
11 against respondent by failing to provide a substantive response to the State Bar's letters of March
12 25, 2016 and April 11, 2016, which respondent received, and e-mail of May 26, 2016, which
13 respondent received, that requested respondent's response to the allegations of misconduct being
14 investigated in case no. 16-O-11725, in willful violation of Business and Professions Code,
15 section 6068(i).

16 COUNT FOUR

17 Case No. 16-O-13856
18 Rules of Professional Conduct, rule 4-100(B)(3)
19 [Failure to Render Accounts of Client Funds]

20 5. On March 18, 2016, respondent received from respondent's client, Thomas
21 Zdanowski, the sum of \$2,500 as advanced fees for legal services to be performed. Respondent
22 thereafter failed to render an appropriate accounting to Zdanowski regarding those funds
23 following termination of respondent's employment on or about June 2, 2016, in willful violation
24 of the Rules of Professional Conduct, rule 4-100(B)(3).

25 ///

26 ///

27 ///

28 ///

COUNT FIVE

Case No. 16-O-13856
Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]

6. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters of June 22, 2016 and July 7, 2016 and e-mail of August 8, 2016, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 16-O-13856, in willful violation of Business and Professions Code, section 6068(i).

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.


NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: 11/18/2016

By: 
Jamie Kim
Deputy Trial Counsel

DECLARATION OF SERVICE

by U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 16-O-11725, 16-O-13856

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1018.6)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: at Los Angeles, addressed to: (see below)

(for Ground Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: MICHAEL W. NEWCOMB, Michael W Newcomb, Attorney at Law, 45089 Vine Cliff St, Temecula, CA 92592.

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS).

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: November 18, 2016

SIGNED: LAURA JETT Declarant

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.



ATTEST October 31, 2017

State Bar Court, State Bar of California
Los Angeles

By _____
Clerk

A handwritten signature in cursive script, appearing to read "Christine D. [unclear]".

(State Bar Court Nos. 14-O-00247 (15-O-13013))

S237471

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

DEC 7 2016

In re MICHAEL WILLIAM NEWCOMB on Discipline

Jorge Navarrete Cl

Deputy

The court orders that Michael William Newcomb, State Bar Number 188321, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for one year subject to the following conditions:

1. Michael William Newcomb must comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on August 9, 2016; and
2. At the expiration of the period of probation, if Michael William Newcomb has complied with the terms of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Michael William Newcomb must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with his membership fees for each of the years 2018, 2019, and 2020. If Michael William Newcomb 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

DEC 07 2016

day of _____ 20

Month

By: _____

CANTIL-SAKAUYE

Chief Justice

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 December 15, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

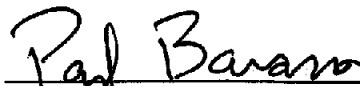
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**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 December 15, 2017.



Paul Barona
Case Administrator
State Bar Court