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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Susan I. Kagan Supervising Attorney 180 Howard St. San Francisco, CA 94105 (415) 538-2037 Bar # 214209	Case Number(s): 16-O-17965-LMA; 17-O-07384 (inv)	For Court use only PUBLIC MATTER FILED MAR 19 2018 <i>MS</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Brian Hilliard 2434 Cedarwood Loop San Ramon, CA 94582-5818 (925) 452-4645 Bar # 244193	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: BRIAN KEMP HILLIARD Bar # 244193 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 **October 24, 2006**.
- (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".

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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

Additional mitigating circumstances:

No Prior Discipline. See page 10.
Pretrial Stipulation. See page 11.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.
- (2) **Probation:**
- Respondent must be placed on probation for a period of **three (3) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) **Actual Suspension:**
- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **90 days**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 No Ethics School recommended. Reason: _____
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

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

F. Other Conditions Negotiated by the Parties:

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BRIAN KEMP HILLIARD

CASE NUMBERS: 16-O-17965-LMA; 17-O-07384 (inv)

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-17965-LMA (Complainants: Siddqui and Khan)

FACTS:

1. On March 9, 2016, Abrar Siddqui and Rahila Khan hired respondent to file a federal racial discrimination action on their behalf against the City of Fremont. From March through November, 2016, Siddqui and Khan paid respondent \$3,500 as advanced fees.
2. On April 17, 2016, respondent filed a complaint on behalf of Siddqui and Khan in *Siddqui et al. v. City of Fremont*, U.S. District Court, Northern District of California (San Francisco), Case No. 16-cv-02012-JSC ("federal action").
3. At all relevant times, respondent maintained the following email address for the federal court's Electronic Case Filing (ECF) system: Bh@hilliard-firm.com. Any time a pleading or order was filed in the federal action, a notification of the filing was emailed to respondent. In addition, many of the pleadings were served on respondent by mail.
4. On June 30, 2016, defendants in the federal action filed a motion to dismiss. Respondent received the motion, but failed to file an opposition.
5. On July 18, 2016, the court issued an order noting that respondent failed to file an opposition, or statement of non-opposition, and ordered that he do so by July 21, 2016. Respondent received the order, but failed to file an opposition, or statement of non-opposition, in violation of the court's order.
6. On July 25, 2016, the court issued an order to show cause (OSC) re: dismissal for failure to prosecute and required respondent to file a response to the OSC by August 1, 2016. The court warned that failure to respond would result in dismissal of the federal action. Respondent received the order.
7. On August 1, 2016, respondent filed a response to the OSC, falsely claiming that he failed to respond to the defendant's motion to dismiss because he did not receive notification of the filing.

8. On August 3, 2016, the court issued an order requiring respondent to file an opposition to the motion to dismiss by August 11, 2016. Respondent received the order, but failed to file an opposition to the motion to dismiss, in violation of the court's order.
9. On August 8, 2016, defendants in the federal action filed an Anti-SLAPP motion to strike plaintiff's state law causes of action. Respondent received the motion, but failed to file a response.
10. On August 17, 2016, defendants in the federal action filed a renewed motion to dismiss based on respondent's failure to file an opposition by August 11, 2016. Respondent received the renewed motion.
11. On August 25, 2016, the court issued an order to show cause (OSC) requiring respondent to file a response to the OSC by August 29, 2017, and show cause why the action should not be dismissed for failure to prosecute. In addition, the court ordered the plaintiffs and respondent to personally appear at an OSC hearing on September 8, 2016. Respondent received the order, but failed to file a response to the OSC, in violation of the court's order. Respondent also failed to inform his clients about the order and the requirement that they appear at the OSC hearing on September 8, 2016.
12. At 3:06 a.m., on September 8, 2016, respondent filed an opposition to the renewed motion to dismiss. On September 8, 2016, the court held the OSC hearing. Respondent failed to appear, in violation of the court's order. Respondent's clients also failed to appear because respondent did not advise them of the OSC hearing. At the OSC, the court dismissed the action with prejudice for failure to prosecute and entered judgment in favor of the defendants. On the same date, the court issued an order referring respondent to the court's standing committee on professional misconduct. Respondent received the order.
13. On September 26, 2016, respondent filed a motion for reconsideration. In the motion, respondent falsely stated that he did not receive notice of the defendant's filings in the federal action and only learned of the Anti-SLAPP motion after the deadline for responding had passed. Respondent also falsely stated that he attempted to file an opposition to the renewed motion to dismiss and a response to the OSC and did not receive notification that the filings were not made until the evening prior to September 8, 2016, at which time he attempted to open and file the original documents, but the documents would not open. Respondent then stated that he spent the next six hours redrafting the documents, which led to filing the opposition at 3:06 a.m.
14. On October 6, 2016, the court issued an order denying respondent's motion for reconsideration. In the order, the court found that respondent's repeated statements about not receiving notifications of filings were not credible. Respondent received the order.
15. Respondent performed no work of value on behalf of the clients. On December 8, 2017, respondent refunded \$3,500 in unearned fees to Siddqui and Khan.

CONCLUSIONS OF LAW:

16. By failing to file an opposition to the motion to dismiss, by failing to file a timely response to the Anti-SLAPP motion, by failing to file a timely opposition to the renewed motion to dismiss and by failing to inform his clients that they were required to be at the OSC hearing on September 8,

2016, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

17. By failing to obey the court's order of July 18, 2016, requiring respondent to file an opposition to the motion to dismiss by July 21, 2016, by failing to obey the court's order of August 3, 2016, requiring respondent to file an opposition to the motion to dismiss by August 11, 2016, and by failing to obey the court's order of August 25, 2016, requiring respondent to appear for the OSC hearing on September 8, 2016, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103 of the Business and Professions Code.
18. By failing to inform the clients about the OSC hearing on September 8, 2016, and the requirement that they attend that hearing, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in willful violation of section 6068(m) of the Business and Professions Code.
19. By failing to refund \$3,500 in unearned fees to the clients at the time of termination, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.
20. By making misrepresentations about not receiving notification of filings in his August 1, 2016 response to the OSC, and by making misrepresentations about not receiving notice of filings and that he attempted to timely file pleadings in his September 26, 2016 motion for reconsideration, respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in willful violation of section 6068(d) of the Business and Professions Code.

Case No. 17-O-07384 (State Bar Investigation)

FACTS:

21. Prior to March 16, 2016, respondent filed a complaint on behalf of the plaintiffs in *United Three Group v. Trans Pacific National Bank*, San Francisco County Superior Court Case No. CGC-15-548029 ("civil action").
22. On March 16, 2016, the court in the civil action issued an order requiring respondent to appear on May 10, 2016, and show cause why the action should not be dismissed and sanctions should not be imposed for failure to file proof of service on defendant or enter default. Respondent received the order.
23. On May 10, 2016, respondent failed to appear. On May 11, 2016, the court issued an order imposing sanctions against respondent in the amount of \$400 to be paid by May 26, 2016, and requiring respondent to appear on August 9, 2016. Respondent received the order, but failed to pay the sanctions and failed to appear on August 9, 2016.
24. On August 4, 2016, respondent changed his office address, but did not inform the court in the civil action until approximately June 6, 2017. Thereafter, the court issued orders requiring respondent's appearance at scheduled hearing and imposing sanctions for his failures to appear, as follows:

<u>Date of Missed Appearance</u>	<u>Amount of Sanctions Ordered</u>
August 9, 2016	\$400
November 3, 2016	None
December 15, 2016	None
February 2, 2016	None
March 28, 2017	\$400

25. On June 6, 2017, the court issued an order imposing sanctions against respondent in the amount of \$400 to be paid by June 21, 2017, and requiring respondent to appear on November 7, 2017. Respondent received the order, but failed to pay the sanctions and failed to appear on November 7, 2017.
26. On November 9, 2017, the court issued an order imposing sanctions against respondent in the amount of \$400 to be paid by February 7, 2018. The court also ordered respondent to pay the outstanding sanctions. Respondent received the order and timely paid the \$400 sanction imposed on November 9, 2017. Respondent later filed an appeal on the remaining sanctions. The appeal is currently pending.

CONCLUSIONS OF LAW:

27. By failing to obey the court's order of March 16, 2016, requiring respondent to pay sanctions and appear on May 10, 2016, by failing to obey the court's order of May 11, 2016, requiring respondent to pay sanctions and appear on August 4, 2016, and by failing to obey the court's order of June 6, 2017, requiring respondent to pay sanctions and appear on November 7, 2017, respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103 of the Business and Professions Code.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's six separate acts of misconduct demonstrate multiple acts of wrongdoing.

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): In Case No. 16-O-17965-LMA, respondent's misconduct resulted in his clients' case being dismissed, causing significant harm to his clients. Respondent also harmed the administration of justice by unnecessarily delaying the lawsuit and wasting judicial resources.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practice law for approximately 10 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Extraordinary Good Character (Std. 1.6(f)): Respondent submitted 10 character letters from people aware of the full extent of respondent's misconduct and attest to his integrity, honesty and professionalism. The letters are from a wide range of references in the legal and general communities.

Family Problems: At the time of the misconduct, respondent was suffering from extreme difficulties in his personal life related to divorce proceedings. (*In re Naney* (1990) 51 Cal.3d 186, 197 [mitigation credit for marital problems if extreme and directly responsible for the misconduct].) Respondent has since resolved those issues and has not committed any further misconduct.

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

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

In this matter, respondent committed six separate acts of professional misconduct. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent's misconduct is found in standard 2.11, which provides: “Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the

administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

In one client matter, respondent failed to perform, failed to inform his clients of significant developments, failed to obey multiple court orders, failed to refund unearned fees and made misrepresentations to the court. In another matter, respondent failed to obey court orders. Respondent's misconduct is serious and directly related to the practice of law. In aggravation, respondent committed multiple acts of misconduct and caused significant harm to his clients in Case No. 16-O-17965-LMA and the administration of justice. Respondent is entitled to mitigation for no prior record of discipline, family problems, good character and entering into a pre-filing settlement.

In light of the serious misconduct, aggravation and mitigation, an actual suspension in the mid-range is warranted under the standards.

Case law is instructive. In *Bach v. State Bar* (1987) 43 Cal.3d 848, the Supreme Court imposed a 60-day actual suspension for an attorney's intentional misrepresentation to the court. In aggravation, the attorney had a prior public reproof for violating former Rules of Procedure, rule 7-103 [communication with a represented party].

Respondent's misconduct is more widespread than that in *Bach* and there is more aggravation. Therefore, discipline above that recommended in *Bach* is appropriate.

On balance, a 90-day actual suspension with a requirement that respondent comply with rule 9.20 of the Rules of Court is necessary to protect the public and serve the purposes of attorney discipline.

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-17965	Count Three(C)	Business and Professions Code section 6068(m)
16-O-17965	Count Six	Business and Professions Code section 6106
16-O-17965	Count Seven	Business and Professions Code section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 1, 2018, the discipline costs in this matter are \$4,784. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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


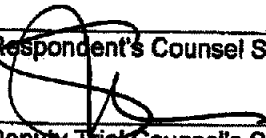
Respondent may not receive MCLE credit for completion of State Bar Ethics School (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: BRIAN KEMP HILLIARD	Case number(s): 18-O-17965-LMA; 17-O-07384 (Inv)

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.

<u>3/1/2018</u>		<u>Brian Hilliard</u>
Date	Respondent's Signature	Print Name
<u> </u>	<u> </u>	<u>N/A</u>
Date	Respondent's Counsel Signature	Print Name
<u>3/8/18</u>		<u>Susan I. Kagan</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
BRIAN KEMP HILLIARD

Case Number(s):
16-O-17965-LMA; 17-O-07384 (inv)

ACTUAL SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

March 19, 2018


PAT E. MCELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 19, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

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

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

BRIAN K. HILLIARD
THE HILLIARD FIRM
2434 CEDARWOOD LOOP
SAN RAMON, CA 94582 - 5818

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

Susan I. Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 19, 2018.



Vincent Au
Court Specialist
State Bar Court