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2019

State Bar Court of California
Hearing Department **PUBLIC MATTER**
Los Angeles
ACTUAL SUSPENSION

<p>Counsel for the State Bar</p> <p>R. Kevin Bucher Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1630</p> <p>Bar # 132003</p>	<p>Case Number(s): 17-O-00634-CV 17-O-01080-CV</p> <p>kwiktag® 241 071 846</p> 	<p>For Court use only</p> <p>FILED <i>14</i></p> <p>FEB --4 2019</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Edward O. Lear 5200 W. Century Blvd. #345 Los Angeles, CA 90045 (310) 642-6900</p> <p>Bar # 132699</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JOHN RICHARD CONTOS</p> <p>Bar # 56782</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 **December 20, 1973.**
- (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 **18** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
 - Costs be 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. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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: **State Bar Court case numbers 14-O-02443, 15-O-12308. See page 14, and Exhibit 1.**
 - (b) Date prior discipline effective: **May 5, 2016**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **former Rules of Professional Conduct, rules 3-700(D)(1), 3-110(A)**
 - (d) Degree of prior discipline: **Private Reproval**
 - (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.

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- (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.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's 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 [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 Respondent's 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 Respondent's 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 Respondent.

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- (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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:

Civic Service and Charitable Work - See page 15.
Letters of Good Character - See page 15.
Pretrial Stipulation - See page 15.

D. Recommended Discipline:

- (1) **Actual Suspension:**
- Respondent is suspended from the practice of law for **one year**, the execution of that suspension is stayed, and Respondent is placed on probation for **one year** with the following conditions.
- Respondent must be suspended from the practice of law for the first **30 days** of the period of Respondent's probation.
- (2) **Actual Suspension "And Until" Rehabilitation:**
- Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.
- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
- (3) **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

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Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
 - a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
 - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first _____ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

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- a. Respondent makes restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first _____ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for _____, the execution of that suspension is stayed, and Respondent is placed on probation for _____ with the following conditions.

- Respondent is suspended from the practice of law for the first _____ of probation (with credit given for the period of interim suspension which commenced on _____).

E. Additional Conditions of Probation:

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional

Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as

Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7) **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **Respondent attended Ethics School on February 7, 2017 and passed the test given at the end of the session. (See rule 5.135(A), Rules of Proc. of State Bar [attendance at Ethics School not required where the attorney completed Ethics School within the prior two years].)**
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any

alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) **Other:** Respondent must also comply with the following additional conditions of probation: _____
- (14) **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) **The following conditions are attached hereto and incorporated:**
- Financial Conditions Medical Conditions
- Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1) **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to 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).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because Respondent provided proof of passage of the Multistate Professional Responsibility Examination on April 28, 2017 as part of a previous disciplinary proceeding (See In the Matter of Trousil (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 229, 244; In the Matter of Seltzer (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 272, fn. 7.).

- (3) **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

8. On May 13, 2014, respondent informed Apar that opposing counsel planned to file a Motion for Summary Judgment, citing a Statute of Limitations defense based on the statements made by Apar in the CDA complaint and during her deposition. The following month, the Motion for Summary Judgment was filed, and a hearing was set for September 8, 2014. Thereafter, respondent failed to file an opposition to the Motion for Summary Judgment, and failed to appear at the hearing on the motion. Respondent failed to calendar relevant dates.

9. On October 9, 2014, the court filed the Order Granting Defendants' Motion for Summary Judgment and Order Dismissing Plaintiff's Complaint.

10. On April 3, 2015, respondent filed a Motion to Set Aside the Summary Judgment. On May 21, 2015, Plaintiff's Motion to Set Aside was granted, and the Court set the hearing on Defendant's Motion for Summary Judgment for July 20, 2015. On June 12, 2015, respondent informed Apar that the Court granted the motion to allow opposition to the Motion for Summary Judgment and that the motion would be heard on July 20, 2015.

11. On July 20, 2015, the court issued a tentative ruling again granting the Motion for Summary Judgment, finding that the statute of limitations had expired prior to plaintiff serving the Notice of Intent. The hearing on the Motion for Summary Judgment was heard on July 20, 2015 and July 24, 2015. On August 31, 2015, the court issued its final order granting the Motion for Summary Judgment.

12. On September 18, 2015, respondent filed a Motion for Reconsideration. Respondent argued the Motion for Reconsideration on October 23, 2015. On October 26, 2015, the Motion for Reconsideration was denied, and on December 4, 2015, a Final Judgment was issued.

13. On December 8, 2015 respondent informed Apar that the likelihood of the Court of Appeal reversing the trial court was very low.

14. On January 30, 2016, respondent discussed with Apar the deadline to file an appeal, the court filing fee, additional estimated attorney fees and costs, the low probability of success on appeal. Nonetheless, Apar decided to proceed with the appeal.

15. On February 5, 2016, respondent filed the Notice of Appeal.

16. On August 4, 2016, respondent applied for an extension of the deadline to file the opening brief in the appeal. Unbeknownst to respondent this application for extension was not registered with the Court.

17. On August 17, 2016, six months after filing the appeal, respondent received a notice from the court regarding his failure to file an opening brief. The notice stated the appeal would be dismissed if the brief was not filed within 15 days. Respondent failed to calendar relevant dates. Thereafter, respondent failed to file an opening brief, and the case was dismissed on September 8, 2016.

18. On October 15, 2016, respondent realized that he had missed the deadline to file the opening brief.

19. On October 15, 2016, respondent informed Apar of the dismissal and assured her that he would refund any costs she advanced towards the appeal. Respondent subsequently provided an accounting and reimbursement to Apar. Apar accepted the refund of fees.

CONCLUSIONS OF LAW:

20. By sending a Notice of Intent to Dr. Tincher, the prospective defendant, in Apar's potential dental malpractice action, without the client's knowledge or permission, and prior to being retained respondent acted without authority, in willful violation of Business and Professions code, section 6104.

21. By failing to file an opposition to defendant's motion for summary judgment in *Apar vs. Tincher, DDS*, Ventura Superior Court case No. 56-2013-00433210-CU-PO-VTA, failing to appear at the hearing on the motion, and failing to file an opening brief following the filing of the Notice of Appeal, respondent recklessly failed to perform legal services with competence in willful violation of former Rules of Professional Conduct, rule 3-110(A).

Case No. 17-O-01080 (Complainant: Willie Parker)

FACTS:

22. In or around the middle of 2013, Willie Parker ("Parker") hired respondent to represent him in a medical malpractice case against two doctors and a hospital.

23. Respondent undertook the representation of Parker on a limited basis. As a condition of respondent's agreement to represent Parker, Parker agreed to dismiss the case if a credible and supportive expert opinion could not be secured. Parker did not pay respondent any fee's for legal services. Respondent agreed to prepare a complaint for Parker to file himself. Parker was instructed to file the prepared complaint with the court and then bring the conformed copy to respondent's office. The retainer agreement embodied these terms, but was never returned to respondent by Parker.

24. Thereafter, respondent prepared the complaint on Parker's behalf. On December 4, 2013, respondent Parker filed the Complaint for negligence in *Parker vs. Gow-Nan Ling, M.D. Cheng-Hsiung Chen, M.S., San Gabriel Valley Medical Center*, Los Angeles Superior Court Case No. BC529420. Parker returned the conformed copy of the filed complaint to respondent's office. However, service of the complaint was not effectuated on the defendants.

25. On July 13, 2016, respondent called Parker. On July 14, 2016, Lawrence Adamsky appeared on behalf of respondent for the Order to Show Cause Re Dismissal for Failure to File Proof of Service, and requested a continuance of the matter. The Court continued the hearing to December 5, 2016, admonishing counsel that the case would be dismissed if no reasonable efforts were made to effectuate service. At that time respondent was awaiting results of a medical records review by Dr. Declusin. Based on this review a decision would be made regarding further pursuit of the case. Soon after July 14, 2016, respondent determined that further pursuit of the case would be fruitless.

26. Thereafter, respondent sent a letter dated July 26, 2016 to Parker explaining that his firm could no longer pursue the case, and that respondent would not take any further actions on this case, including making any further court appearances. Respondent also offered to discuss the matter further with Parker. Thereafter, respondent was of the belief that respondent and Parker had agreed that he

would not take any further actions on the case and the matter was to be dismissed by default. Respondent did not withdraw as counsel at that time or anytime thereafter.

27. On December 5, 2016, Parker appeared at the Order to Show Cause Re Dismissal for Failure to File Proof of Service. Respondent did not appear. The Court took the Order to Show Cause and Trial Setting Conference off calendar, and issued an Order to Show Cause Re Dismissal for Failing to Serve the Complaint. The court set the hearing date for March 6, 2017, and the court clerk served a copy of the minute order on respondent.

28. On January 20, 2017, Parker sent a certified letter to respondent requesting the return of his documents, and asking respondent to contact him. The letter was delivered January 23, 2017. Respondent failed to return Parker his documents and failed to contact him. Respondent overlooked the request from Parker.

29. On March 6, 2017, Parker appeared in court and stated that he had no objection to the court dismissing the case. Respondent did not appear.

30. Respondent did not return Parker's file to him until May 2018. However, the returned file did not contain Parker's radiographic images.

CONCLUSIONS OF LAW:

31. By failing to comply with the July 14, 2016 Order to Show Cause Re Dismissal for Failure to File Proof of Service and the December 5, 2016 Order to Show Cause Re Dismissal for Failure to File Proof of Service in *Parker vs. Gow-Nan Ling, M.D., Chen-Hsiung Chen, M.S., San Gabriel Valley Medical Center*, Los Angeles Superior Court case No. BC529420, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of Business and Professions code, section 6103.

32. By failing to promptly release all relevant file materials to his client following respondent's termination of employment, respondent failed to promptly release to the client, at the request of the client, all the client's papers and property, in willful violation of former Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATING CIRCUMSTANCES.

Prior Misconduct (Std. 1.5(a)): Respondent received a private reproof, effective May 6, 2016, in case nos. 14-O-02443 and 15-O-12308. Respondent stipulated that the failed to release client files in two separate matters, and failed to perform in a single client matter. Respondent's multiple acts of misconduct were an aggravating circumstance. In mitigation, respondent had no prior discipline, engaged in substantial civic service and charitable work, suffered from extreme emotional/personal difficulties, and cooperated with the State Bar by entering into the pre-filing discipline stipulation. See Exhibit 1. Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the document.

Multiple Acts of Wrongdoing (Std. 1.5(b)); Respondent's performance without authority and failure to perform in one client matter, as well as his failure to comply with court orders, and failure to release a client file in another matter constitute multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

Civic Service and Charitable Work: Over the course of his nearly 45 years of practice, respondent has served on many bar organizations and volunteered for professional and community projects. As of 2016, the year of his only discipline, respondent has continued to engage in civic service and charitable work entitling him to mitigation. He has served on bar organizations and volunteered for professional and community projects. He has given presentations on trial technique and advocacy for the Ventura County Bar Association. Moreover, he is on the board of Ventura County Bar Associations Inns of Court. His work there has included the mentoring of younger members of the bar. He has provided pro bono review of potential cases in Ventura County. Respondent is also scheduled to provide lectures on the new Rules of Professional Conduct beginning next year. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335; *Porter v. State Bar* (1990) 52 Cal.3d 518 [civic service and charitable work can be mitigation as evidence of good character].)

Letters of Good Character (Std. 1.6(f)): Respondent is entitled to mitigation for the fifteen letters of good character attested to by a wide range of references in the legal and general communities, including: 13 attorneys, four of which know respondent in both a personal capacity and professional capacity; one licensed vocational nurse; and one paralegal all of whom are aware of the full extent of the misconduct.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and preserved 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 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).)

In this matter, respondent admits to committing four 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 arises from respondent’s misconduct in failing to comply with court orders pursuant to Business and Professions Code section 6103. Standard 2.12(a), provides “disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law.” The sanction for respondent’s failure to perform and performing without authority is found under Standard 2.7(b) which provides that “actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.”

In the instant matter, respondent’s misconduct arose from his representation of two clients in two separate civil matters, and the acts were related to respondent’s practice of law. The conduct harmed respondent’s clients as respondent acted without authority, failed to perform with competence, failed to comply with court orders, and failed to timely return a client file. While the sanction of disbarment provided by Standard 2.12(a) is extreme for this particular matter, given the misconduct and the fact that it is directly related to the practice of law a period of actual suspension is appropriate. Respondent has one prior record of discipline involving two cases that resulted in a private reproof. See Exhibit 1. Standard 1.8(a) requires that “if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction.” Based on the totality of the circumstances, a one-year suspension, stayed, with one year of probation, with conditions including an actual suspension for the first 30 days is appropriate to maintain high professional standards and preserve public confidence in the legal profession.

The level of discipline, a one-year suspension, stayed, with one year of probation, with conditions including an actual suspension for the first 30 day, is supported by case law. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to perform legal services with competence, failed to comply with Supreme Court orders, and failed to timely report judicial sanctions. The Review Department imposed a six months’ stayed suspension. In mitigation, the attorney had no record of prior discipline in 17 years of practice. In the present matter, respondent’s misconduct is similar to Riordan, in that respondent failed to comply with court orders, missed court appearances, and failed to perform with competence. However, the Standards now call for actual suspension for failure to comply with a court order. Therefore, a higher level of discipline is warranted here, and there is no reason to deviate from the presumed level of discipline.

The Supreme Court has generally considered actual suspension an appropriate discipline where multiple instances of misconduct involving client inattention have occurred. (*Lester v. State Bar* (1976) 17 Cal.3d

547.) In *Gadda v. State Bar* (1990) 50 Cal.3d 344, the attorney had been found culpable of unreasonable client neglect in three immigration matters aggravated by deceit in two of the matters, the publication of a misleading advertisement, and failure to supervise and take responsibility for a novice attorney. The Court considered as aggravation the attorney's failure to recognize the seriousness of his misconduct but noted in mitigation his very active and generous pro bono immigration legal work. The Supreme Court ordered a two year suspension, stayed, on conditions including a six month actual suspension and until restitution was made.

In this matter, respondent's conduct, involves significantly less egregious misconduct than that in *Gadda*. While *Gadda* involved three matters, this case involves two. Additionally, *Gadda* involved multiple facets of an attorney's practice of law, including his mis-management of client matters, his duty as a supervisory attorney, and his duty to advertise his services based on true statements. Moreover, while *Gadda* involved acts of dishonesty, this matter does not. In this matter, Respondent's mitigation includes many years of civic service and charitable work, 15 letters of good character, and respondent's acknowledgment of misconduct and cooperation with the State Bar in the form of this pretrial stipulation. Because the respondent's case involves less egregious misconduct, leading to limited harm to respondent's clients, and equal or more mitigation, discipline significantly less than that afforded by the court in *Gadda* is appropriate.

Therefore, one year suspension, stayed, with one year of probation, with conditions, including the condition that respondent be actually suspended for the first 30 days, will serve the purpose of protecting the public, the courts, and 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>
17-O-00634	Count 3	Failure to Respond to Client Inquiries
17-O-00634	Count 4	Failure to Inform Client of Significant Developments
17-O-00634	Count 5	Improper Withdrawal from Employment
17-O-00634	Count 6	Moral Turpitude Misrepresentation
17-O-00634	Count 7	Failure to Cooperate with the State Bar of California
17-O-01080	Count 8	Failure to Perform With Competence
17-O-01080	Count 10	Failure to Respond to Client Inquiries

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 19, 2018, the discipline costs in this matter are \$11,914. 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 JOHN RICHARD CONTOS	Case number(s): 17-O-00634-CV 17-O-01080-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 Fact, Conclusions of Law and Disposition.

1/15/19
Date



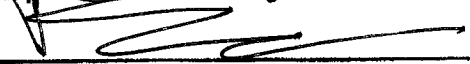
Respondent's Signature John Richard Contos
Print Name

1/17/19
Date



Respondent's Counsel Signature Edward O. Lear
Print Name

1-18-19
Date



Deputy Trial Counsel's Signature R. Kevin Bucher
Print Name

(Do not write above this line.)

In the Matter of: JOHN RICHARD CONTOS	Case Number(s): 17-O-00634-CV 17-O-01080-CV
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ACTUAL SUSPENSION ORDER

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

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

1. On page 2 of the Stipulation, at paragraph B.(1)(b), "May 5, 2016" is deleted, and in its place is inserted "May 6, 2016".
2. On page 3 of the Stipulation, at paragraph B.(11), "page 14" is deleted, and in its place is inserted "page 15".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

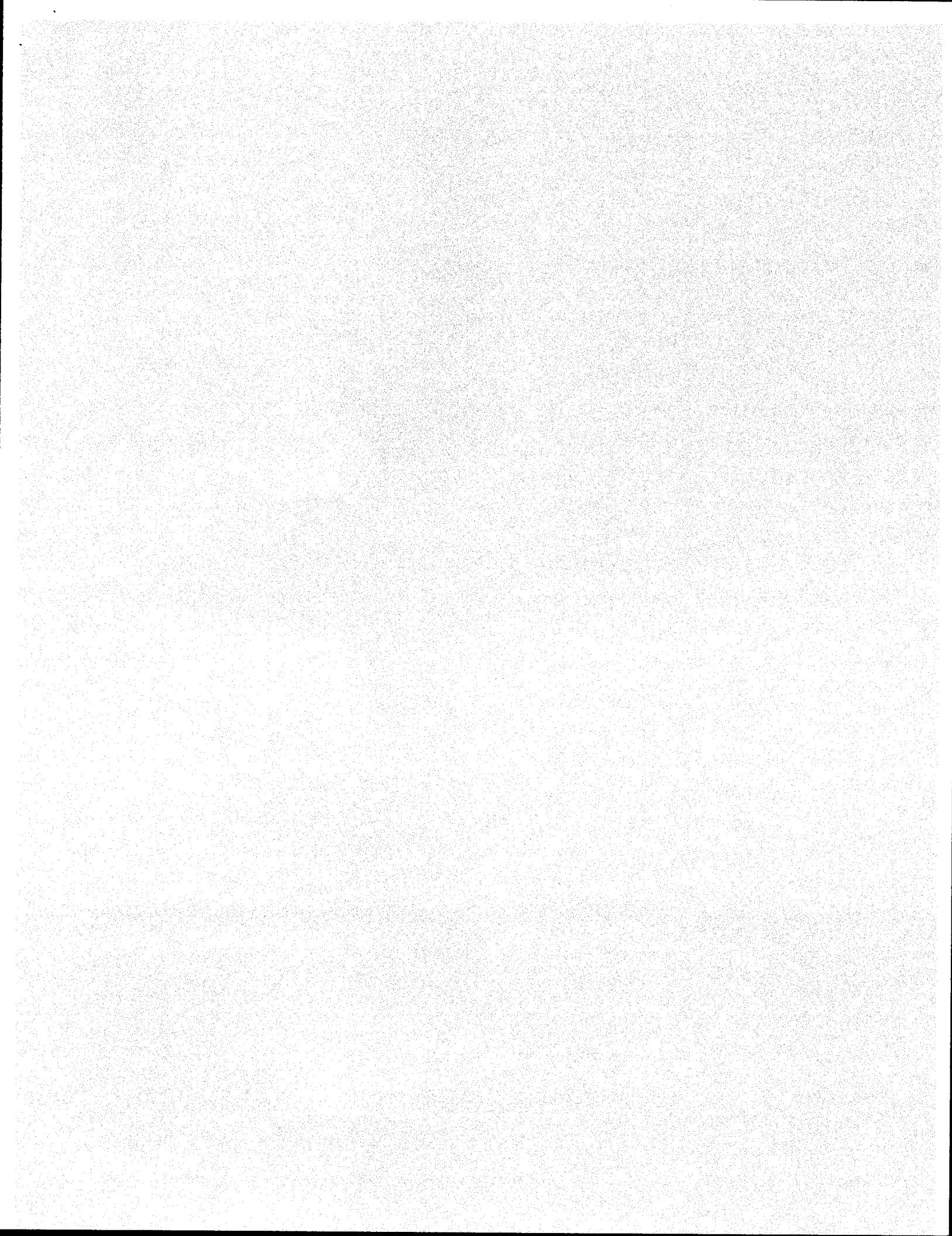
February 4, 2019

Date

Rebecca Meyer Rosenberg

REBECCA MEYER ROSENBERG, JUDGE PRO TEM

Judge of the State Bar Court



(Do not write above this line.)

State Bar Court of California Hearing Department CONFIDENTIAL REPROVAL		
Counsel For The State Bar R. Kevin Bucher Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1630 Bar # 132003	Case Number(s): 14-O-02443; 15-O-12308	For Court use only <div style="text-align: center;"> FILED APR 15 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Susan L. Margolis 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996 Bar # 104629	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: JOHN RICHARD CONTOS Bar # 56782 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 **December 20, 1973**.
- (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 **11** 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."

(Do not write above this line.)

- (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):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - 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.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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".

(Do not write above this line.)

- (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.
- (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 8.
- (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. **See attachment, page 8.**
- (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.

(Do not write above this line.)

- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (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:

Civic Service and Charitable Work - See attachment, page 8
Extreme Emotional/Personal Difficulties - See attachment, page 9
Pre-filing Stipulation - See attachment, page 9

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.

(Do not write above this line.)

- (2) During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) 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 of the effective date of the reproof.

No MPRE recommended. Reason:

- (11) The following conditions are attached hereto and incorporated:

(Do not write above this line.)

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

7. Respondent delayed filing a lawsuit on behalf of his client until January 3, 2014 three days before the statute of limitations expired on his client's personal injury claim. Thereafter, Respondent took no further action on his client's behalf.

8. In May 2015 his client retained new counsel and Respondent was removed from the case.

9. During the course of Respondent's representation, his minor client's mother requested a copy of her son's records on at least 14 occasions throughout 2013, 2014 and 2015. The records were again requested by his client's new attorney Diane Goldman, after Respondent was removed from the case.

10. Respondent provided a set of his client's records to the new attorney on or around May 26, 2015. The attorney subsequently reviewed the documentation that Respondent provided to her and discovered that it was incomplete.

11. After Respondent was removed as counsel of record, the civil case was settled.

CONCLUSIONS OF LAW:

12. By failing to promptly release all relevant file materials to his client following Respondent's termination of employment, Respondent failed to promptly release to the client, at the request of the client, all the client's papers and property, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

13. By failing to perform any work on his client's behalf for over one year following the filing of a civil complaint, Respondent, intentionally, recklessly or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's failure to perform, along with his failure to promptly return the client files, demonstrates multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline – (Std. 1.6(a)) - Respondent's 41 years of discipline-free practice, coupled with the present misconduct which is not likely to recur, is entitled to significant weight in mitigation.

Civic Service and Charitable Work – Over the course of his 43 years of practice, Respondent has served on many bar organizations and volunteered for professional and community projects. He has given MCLE presentations on trial technique and advocacy for the Los Angeles Bar and, in more recent years, for the Ventura County Bar. He continues to present programs to the Ventura County Bar Association. He is counsel to the Ventura County Bar Association, and is on the Board of the American Inns of Court. He has provided pro bono reviews of potential cases in Ventura County. For several years starting in the late 1990's, he was asked by the Presiding Judge to serve as a mediator for complex cases in the Superior Court. He also serves as a Special Master in Los Angeles, Ventura, and Santa Barbara Counties. Respondent served as a coach for the Constitutional Rights Foundation during a 10-year stretch in the 1990's, focusing on schools in depressed parts of the San Fernando Valley. He was also invited for 5 years straight to judge the Moot Court competition at Loyola University, and in the

past five years, he has coached the trial advocacy teams at USC. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335; *Porter v. State Bar* (1990) 52 Cal.3d 518 [civic service and charitable work can be mitigation as evidence of good character].)

Extreme Emotional/Personal Difficulties – In both of the underlying client matters Respondent was retained in 2007. The alleged misconduct did not occur for several years thereafter, on the heels of the break-up of his law firm, which was an emotional struggle unraveling 30 years of partnership and 45 years of friendship with his former partner. During the same time period, Respondent also experienced catastrophic personal financial losses, due to the breakup of his law office, and the unforeseen downturn of the economy, that depleted his retirement savings, causing further financial and personal stress. The re-organization of his business and economic losses, along with the emotional turmoil related thereto, was at least partially related to the misconduct. (See *In the Matter of Spaiht* (1990) 3 Cal. State Bar Ct. Rptr. 511 [marital problems and similar difficulties can be mitigating if they are extreme and are directly responsible for the misconduct].)

Pre-filing Stipulation - Respondent entered into the present stipulation prior to filing of formal charges, saving valuable State Bar 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].)

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).)

The most severe sanction applicable to respondent’s misconduct is found in Standard 2.7(c), which applies to Respondent’s failure to perform. Standard 2.7(c) provides “[s]uspension or reproof is the presumed level of discipline for performance, communication, or withdrawal violations, which are

limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the clients." Standard 2.19 applies to the failures to return client files, and provides "[s]uspension not to exceed three years or reproof is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in the Standards."

In the present matter, Respondent's misconduct was limited in scope but the failure to perform, which resulted in his removal as counsel of record, lasted for a period of over one year. His failure to return client files arguably occurred over the course of a year or more, during the same time period in both cases, and when the files were returned they were incomplete. Nonetheless, both matters settled and there is no evidence of actual harm to the client arising from the misconduct. Respondent's good character and 41 years of discipline free practice make it unlikely that similar misconduct will occur in the future. Further, the breakup of Respondent's long-standing law partnership is behind him, and the disorganization and emotional turmoil related thereto have resolved. Mitigating circumstances greatly outweigh the single aggravating factor of multiple acts of misconduct. Accordingly, discipline on the low end of the range provided by the Standards is appropriate. A private reproof, with probationary conditions for a period of one year, and with the condition that Respondent attend a session of State Bar Ethics School and pass the test given at the end, will serve the purposes of protecting the public, the courts, and the legal profession.

EXCLUSION FROM MCLE CREDIT

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

(Do not write above this line.)

In the Matter of JOHN RICHARD CONTOS	Case number(s): 14-O-02443; 15-O-12308
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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 Fact, Conclusions of Law and Disposition.

4/4/2016
Date


Respondent's Signature

JOHN RICHARD CONTOS
Print Name

April 6, 2016
Date


Respondent's Counsel Signature

SUSAN L. MARGOLIS
Print Name

4-11-16
Date


Deputy Trial Counsel's Signature

R. KEVIN BUCHER
Print Name

(Do not write above this line.)

In the Matter of: JOHN RICHARD CONTOS	Case Number(s): 14-O-02443; 15-O-12308
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REPROVAL ORDER


Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

April 15, 2016
Date


W. KEARSE MCGILL
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 April 15, 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:

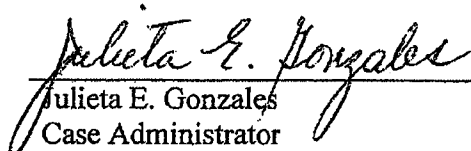
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Ronald K. Bucher, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 15, 2016.



Julieta E. Gonzales
Case Administrator
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 Los Angeles, on February 4, 2019, 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:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

R. Kevin Bucher, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 4, 2019.



Paul Songco
Court Specialist
State Bar Court