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**State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION**

<p>Counsel for the State Bar</p> <p>Dina E. Goldman Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2077</p> <p>Bar # 142601</p>	<p>Case Number(s): 18-H-13510-PEM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>OCT 05 2018</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Merrill Eugene Zimmershead 6500 Princevalle Street Gilroy, CA 95020-6702 (408) 593-7539</p> <p>Bar # 78695</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MERRILL EUGENE ZIMMERSHEAD</p> <p>Bar # 78695</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 21, 1977**.
- (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 **15** 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. 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.
 - 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. One-fourth of the costs must be paid with Respondent's membership fees for each of the following years: next four billing cycles.
- 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: **16-O-10916; 16-O-14861. See page 11 and the Certified Copy attached hereto as Exhibit 1.**
 - (b) Date prior discipline effective: **May 2, 2017.**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **rule 3-700(a)(2) of the Rules of Professional Conduct; Business and Professions Code section 6068(m).**
 - (d) Degree of prior discipline: **Private Reproval Public Disclosure.**
 - (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.

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- (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 11.**
- (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. **See pages 11 and 12.**
- (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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial stipulation. See page 11.

Emotional Difficulties. See page 12.

D. Recommended Discipline:

Stayed Suspension:

Respondent is suspended from the practice of law for **1 year**, the execution of that suspension is stayed, and Respondent is placed on probation for **1 year** with the following conditions.

- (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 completed Ethics School and passed the test on November 7, 2017.**
- (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

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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.

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

- (1) **Multistate Professional Responsibility Examination Within One Year:** 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 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
- (3) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITIONS

IN THE MATTER OF: MERRILL EUGENE ZIMMERSHEAD
CASE NUMBER: 18-H-13510-PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations the specified statutes and/or Rules of Professional Conduct.

State Bar Court Case No. 18-H-13510

FACTS:

1. On or about April 3, 2017, respondent entered into a Stipulation re: Facts, Conclusions of Law, and Disposition (“Stipulation”) with the State Bar of California in case numbers 16-O-10916 and 16-O-14861.
2. In the Stipulation, respondent agreed, inter alia, to the following conditions of reproval:
 - a. Submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10, and a final report due no later than the last day of the condition period, setting forth under penalty of perjury whether he complied with the State Bar Act, Rules of Professional Conduct, and his reproval conditions.
 - b. Provide proof of passage of the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of his reproval.
 - c. Within 10 days of any change, report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
3. The Stipulation was filed on April 12, 2017, and the Private Reproval Public Disclosure Order became effective on May 3, 2017.
4. On May 9, 2017, the Office of Probation uploaded a letter to respondent’s State Bar private member profile outlining the terms of his reproval. Probation also sent respondent an email notifying him of the uploaded letter. The letter specifically reminded respondent of his obligations to: (1) contact his probation deputy and schedule a required meeting by June 2, 2017; submit quarterly reports beginning July 10, 2017, and thereafter on or before the 10th day after the end of each quarter; submit proof of passage of the MPRE by May 3, 2018; and submit a final report by May 3, 2018. The letter advised that failure to comply with these conditions may result in a non-compliance referral which may lead to the imposition of additional discipline and attendant costs. It

also instructed that requests for extension of time or modifications must be filed with the State Bar Court. Attached to the letter were copies of the reapproval conditions, the MPRE and State Bar Ethics School schedule, and a quarterly report form with instructions. The State Bar received notification that respondent had read the email notifying him of the letter.

5. On June 30, 2017, respondent emailed Probation Case Specialist, Eddie Esqueda noting that he believed June 30 was the deadline for his quarterly report, that he could not find instructions for completing the report and asking for assistance.
6. On June 30, 2017, Esqueda responded to respondent's email, reminding him that instructions were attached to the reminder letter uploaded to his member profile, and informing him that he could submit the quarterly report between July 1 and July 10, 2017. Respondent replied that he could not find the letter. Esqueda replied with a link to the membership page of the State Bar website.
7. On July 10, 2017, respondent submitted a compliant quarterly report.
8. On October 10, 2017, respondent emailed Esqueda noting that it was the last day to file his third quarter report, that he could not find the form after hours of searching. He requested a one-day extension to file the information on the correct form if Esqueda could help him find it. He submitted the required information in the email as well. On October 10, 2017, the Office of Probation received the email version of the quarterly report and marked it Not Compliant because it mistakenly said the report was for the third quarter of 1917, instead of 2017.
9. On October 12, 2017, respondent emailed Esqueda to inform him that he had confirmed his registration for the State Bar Ethics Class on November 7, 2017, but was confused about the testing date because he believed he had registered for the test on November 4, 2017. Respondent had registered to take the MPRE on November 4, 2017. He appeared to confuse the MPRE with the test for State Bar Ethics Class and never took the MPRE because he thought the State Bar Ethics Class test satisfied the requirement. Respondent stated in the email to Esqueda that the Ethics class coordinator had informed him that there was no separate date for the test since it was accommodated at the time of the Ethics Class.
10. On October 13, 2017, Esqueda emailed respondent that the report he submitted would have been compliant except that he had indicated the wrong reporting period, stating that it was for the third quarter of 1917. Esqueda again reminded respondent that he could find the quarterly report form with the reminder letter uploaded to his member profile. Respondent received this email.
11. On February 9, 2018, Probation Case Specialist Michael Kanterakis sent respondent a letter, to the address respondent reported to the State Bar, indicating that the Office of Probation had not received a compliant quarterly report for the third quarter of 2017. Kanterakis also uploaded the letter to respondent's State Bar Membership Profile, and

emailed respondent regarding the letter. On February 28, 2018, the mailed version of the letter was returned to the State Bar marked as Not Deliverable as Addressed/Unable to Forward.

12. From March 2015 until March 7, 2018, respondent's official State Bar address was the address to which Kanterakis sent the February 9, 2018 letter. Respondent changed the address on March 8, 2018.
13. On March 1, 2018, Kanterakis sent respondent a letter, to the address respondent reported to the State Bar, informing respondent that the previous letter had been returned as undeliverable. Kanterakis also informed respondent that his October 10, 2017 report was not compliant and that the Office of Probation had not received the quarterly report due on January 10, 2018. The letter reminded respondent that he was required to inform the State Bar and the Office of Probation within 10 days of any change of address. The letter informed respondent that he was not in compliance with the terms of his probation and he may be referred for non-compliance, which could result in additional discipline. The letter further informed respondent that if he was referred for non-compliance he was still required to timely comply with all probation conditions. Kanterakis also emailed respondent regarding this letter. Respondent received this email. On March 21, 2018, the mailed version of the letter was returned to the State Bar marked as Not Deliverable as Addressed/Unable to Forward.
14. On March 9, 2018, respondent sent an email to Kanterakis in response to Kanterakis' March 1 email, indicating that he needed help finding the right form to comply. He stated that he had been out of touch for the past three months because of a divorce and having to move from his home that was his wife's separate property. Kanterakis replied on March 13, 2018 referring respondent to the courtesy letter attached to the March 1 email. Respondent received this email.
15. On March 17, 2018, respondent submitted amended quarterly reports for October 2017 and January 2018. On March 19, 2018, Kanterakis emailed respondent that the Office of Probation had received his non-compliant quarterly reports due by October 10, 2017 and January 10, 2018. Respondent received this email.
16. On April 4, 2018, respondent submitted a compliant quarterly report for the first quarter of 2018. The report indicated that he had reported his changed address to the State Bar late, that a divorce required him to relocate to a new home, and that his living arrangements were very confused for a while.
17. On May 22, 2018, Kanterakis sent respondent a letter, to the address respondent reported to the State Bar, reminding him of the State Bar's March 1, 2018 letter showing current compliance and non-compliance. Kanterakis also emailed this letter to respondent. Respondent received this email. The May 22 letter included an updated chart summarizing respondent's compliance and non-compliance with the conditions of his probation. The chart shows: that the quarterly report due by October 10, 2017 was non-compliant and finally submitted March 17, 2018; that the quarterly report due by January

10, 2018 was submitted late on March 17, 2018; that respondent's final report due by May 3, 2018 was not received. The chart further shows that the Office of Probation did not receive proof of passage of State Bar Ethics School or the MPRE, both which were due by May 3, 2018. Respondent had in fact emailed Kanterakis his proof of completion of State Bar Ethics School, conducted on November 7, 2017, on March 20, 2018, which was marked Compliant by the Office of Probation.

18. On July 10, 2018, the Office of Probation received respondent's final quarterly report, which was due by May 3, 2018.

CONCLUSIONS OF LAW:

19. By failing to submit a compliant quarterly report to the Office of Probation by the due date of October 10, 2017; by failing to timely submit a quarterly report to the Office of Probation by the due date of January 10, 2018; by failing to take and pass the MPRE and submit proof of passage to the Office of Probation by the due date of May 3, 2018; by failing to change his address with the Membership Records Office of the State Bar or the Office of Probation within ten days of any change; and by failing to submit a final report to the Office of Probation by the due date of May 3, 2018, respondent failed to comply with the conditions attached to his private reproof, in willful violation of rule 1-110 of the Rules of Professional Conduct.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing: Respondent's violation of five separate reproof conditions represents multiple acts of wrongdoing.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline—a private reproof with public disclosure—in State Bar Court case numbers 16-O-10916 and 16-O-14861. In April, 2017, respondent stipulated to discipline in two client matters based on misconduct including: violations of rule 3-700(A)(2) for improperly withdrawing from employment; and violations of Business and Professions Code section 6068(m), for failing to promptly respond to his client's reasonable status inquiries. Respondent was assigned aggravation for multiple acts of wrongdoing, and significant harm to the client, the public or the administration of justice. He was assigned mitigation for candor and cooperation, no prior discipline, and entering into a pre-trial stipulation.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pre-Trial Stipulation: By entering into this stipulation, respondent has acknowledged his 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 [mitigative credit given for entering into stipulation as to facts and culpability].)

Candor/Cooperation (Std. 1.6(e)): After discovering that he had not taken the MPRE as required by his probation conditions, respondent promptly registered for the next administration of the test on November 10, 2018 and provided proof of registration to the State Bar. He also

submitted his final quarterly report to the Office of Probation on July 10, 2018, which was not timely, but shows his attempt to cooperate after learning that he had not properly submitted the final report.

Emotional Difficulties: In October 2017, Respondent went through an unexpected and difficult divorce, which caused him to have to relocate his home. He had to vacate the home he had shared with his wife. His son and his family had also lived at this property and were also asked to leave. Ultimately, respondent, his son, and his son's family moved to another property owned by Zimmershead and his wife, after they had evicted renters that were in the property and repaired substantial damage to the property. During the divorce, he had to refinance this property to be able to buy out his wife's interest. He suffered emotional distress and depression during this time, due to the divorce and his displacement. These emotional difficulties caused him to be distracted and contributed to his untimely filings and confusion regarding the MPRE. He sought help for this distress, obtained counseling, and was prescribed an anti-depressant, which he still takes.

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 high professional standards; and preservation of public confidence in the legal profession. (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 discipline 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. (Std. 1.7(b) & (c).)

Standard 2.14 applies to violations of rule 1-110 of the Rules of Professional Conduct and provides: “Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition and the member’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent failed to comply with several disciplinary conditions, and, to date, he has yet taken or submitted proof of passage of the MPRE. In aggravation, he committed multiple acts of misconduct and has a prior record of discipline. However, respondent did not ignore his obligations; he made repeated attempts to fulfill his reporting requirements, albeit untimely or incorrectly. When he discovered that he had not taken the MPRE as required, he promptly registered for the next administration of the test on November 18, 2018, and provided proof of registration to the State Bar. He also provided evidence that he was registered for the November 4, 2017 MPRE, but did not take the test because he believed that he had satisfied the requirement when he took the test for State Bar Ethics School on November 7, 2017. He also provided evidence that he was under emotional distress during the time that he failed to comply with his reprobation conditions due to an unexpected divorce which caused him to have to move suddenly. His divorce and displacement from his home caused him emotional distress and depression. Respondent also entered into this pre-trial stipulation. Given his attempts at compliance and his overall mitigation, a downward departure from the presumed sanction of actual suspension is appropriate.

Case law is instructive. In *In re Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, the Review Department recommended a 30-day actual suspension for attorney who violated probation conditions by failing to timely make restitution and attend Ethics School. The Review Department emphasized the significance of the attorney’s failure to pay restitution and noted that it was centrally related to his prior discipline for trust account violations. (*Id.* at pp. 574.) In mitigation, the attorney was afforded some consideration for his cooperation; the death of his father after a period of illness; and his attempts to make restitution and comply with probation. In aggravation, the attorney had a prior record of discipline for a one-year stayed suspension; he only completed restitution after considerable effort and pressure on the part of the State Bar; and as uncharged misconduct, he improperly used his employer’s name (the Yolo County District Attorney’s Office) in his State Bar pleadings, which the Review Department found was a “misrepresentation . . . of official participation.” (*Id.* at p. 573.)

Here, as in *Gorman*, respondent failed to comply with disciplinary conditions and he has a prior record of discipline. However, on balance, respondent’s misconduct is less serious than in *Gorman*, given that there the attorney failed to pay restitution, which was of significant import. (See also *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678 [“We cannot emphasize enough the importance of timely restitution payments as central to the rehabilitative process”].) Respondent is therefore deserving of lesser discipline than the attorney in *Gorman*. Accordingly, a one-year stayed suspension, with probation and attendant conditions, will serve the purposes of discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 15, 2018, the discipline costs in this matter are \$3,857. 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”).


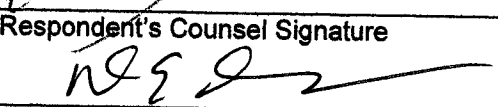
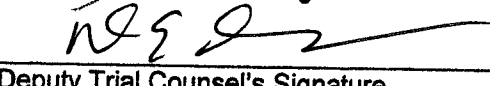
Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: MERRILL EUGENE ZIMMERSHEAD	Case Number(s): 18-H-13510-PEM
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>8/30/2018</u> Date	 Respondent's Signature	<u>Merrill Eugene Zimmershead</u> Print Name
<u>9/24/2018</u> Date	 Respondent's Counsel Signature	<u>Dina E. Goldman</u> Print Name
<u>9/24/2018</u> Date	 Deputy Trial Counsel's Signature	<u>Dina E. Goldman</u> Print Name

(Do not write above this line.)

In the Matter of: MERRILL EUGENE ZIMMERSHEAD	Case Number(s): 18-H-13510
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STAYED SUSPENSION ORDER

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

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

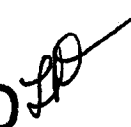
1. On page 2, paragraph B.(1)(b), "May 2, 2017" is deleted, and "May 3, 2017" is inserted.
2. On page 13, first paragraph, line 4, after "orders"; the following is inserted, "Standard 1.8(a) is also considered. Standard 1.8(a) states that when a member has a single prior record of discipline, the 'sanction must be greater than the previously imposed sanction,' subject to certain exceptions that are not applicable here."

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).)**

Date Oct 5, 2018


LUCY ARMENDARIZ
Judge of the State Bar Court

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco REPROVAL		
Counsel For The State Bar Erica L. M. Dennings Senior Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Telephone: (415) 538-2285 Bar # 145765	Case Number(s): 16-O-10916 16-O-14801	For Court use only PUBLIC MATTER FILED  APR 12 2017 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Merrill Eugene Zimmershead Attorney at Law 6377 Little Uvas Rd. Morgan Hill, CA 95037-9156 Telephone: (408) 782-7438 Bar # 78695	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	NOT FOR PUBLICATION
In the Matter of: MERRILL EUGENE ZIMMERSHEAD Bar # 78695 A Member of the State Bar of California (Respondent)		

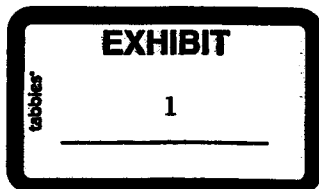
Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 21, 1977.
- (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 10 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."

(Effective April 1, 2016)

Reproval



(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 §§3088.10 & 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."

(Effective April 1, 2015)

Reproof

(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. Respondent failed to complete the matters for which he was hired and failed to communicate with his clients in two (2) client matters.
- (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(f) & 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 investigation and proceedings. See Attachment to Stipulation, at p. 8.

(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:

No prior discipline: See Attachment to Stipulation, at p. 8.
Pre-trial stipulation: See Attachment to Stipulation, at p. 8.
Physical Difficulties: See Attachment to Stipulation, at p. 8.

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 Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of one (1) 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 reproof. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reproof conditions period, 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 reproof with the probation monitor to establish a manner and schedule of compliance. During the reproof conditions period, 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:

(Effective April 1, 2016)

(Do not write above this line.)

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MERRILL EUGENE ZIMMERSHEAD

CASE NUMBERS: 16-O-10916, 16-O-14861

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-10916 (Complainant: Leigh Smith)

FACTS:

1. Leigh Smith ("Smith") hired respondent in December 2011 to negotiate a reduction in past due child support with the Santa Clara Department of Child Support Services ("DCSS"). DCSS claimed that Smith owed approximately \$21,000 in back child support. Smith paid respondent \$1000 for the representation.

2. Thereafter, respondent took steps to negotiate a settlement with DCSS including communicating with DCSS on two occasions in 2013. After communications with DCSS and Smith, respondent believed that he could not do anything further for Smith and that his representation was finished. Respondent took no further actions to settle the case with DCSS. Respondent did not communicate to Smith that he considered his representation concluded.

3. Between 2013 and 2015, Smith emailed respondent six times to determine the status of the case. Respondent received the emails, but did not provide Smith with updates on the status of his case or tell Smith that he was no longer representing him.

CONCLUSIONS OF LAW:

4. By failing to take any further action on his client's behalf to settle past due child support after 2013, respondent improperly withdrew from employment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

5. By failing to respond to his client's six emails requesting the status of the case, respondent failed to respond promptly to his client's reasonable status inquiries in willful violation of Business and Professions Code, section 6068(m).

Case No. 16-O-14861 (Complainant: Maria Diaz)

6. In December 2009, Maria Diaz ("Diaz") hired respondent to file a bankruptcy petition on her behalf. Between December 2009 and February 2010, Diaz paid respondent \$2,367. Between 2010 and 2012, respondent took steps to file the petition including obtaining documents from Diaz and providing a draft petition to Diaz. In January, 2012, respondent asked Diaz for additional documents. Respondent did not receive any additional information from Diaz.

7. Thereafter, respondent performed no further work on Diaz's bankruptcy matter.

8. In 2013, Diaz called respondent on several occasions to determine the status of her case leaving messages for respondent to return her calls. Respondent received the messages, but failed to respond to the inquiries.

9. Diaz filed a State Bar complaint against respondent on July 5, 2016. Respondent refunded \$2365 to Diaz in December 2016.

CONCLUSIONS OF LAW:

10. By not completing or filing the bankruptcy petition on behalf of his client, respondent improperly withdrew from employment in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

11. By not responding to his client's telephone calls requesting the status of the case, respondent failed to respond promptly to his client's reasonable status inquiries in willful violation of Business and Professions Code, section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent improperly withdrew from representation and failed to communicate in two client matters.

Significant harm to the client, the public, or the administration of justice (Std. 1.5(j)): In both cases the clients believed respondent represented them for a significant amount of time after he withdrew, thus preventing them from seeking representation from another attorney.

MITIGATING CIRCUMSTANCES.

Spontaneous Candor and Cooperation (Std. 1.6(e)): Respondent cooperated throughout the disciplinary proceedings.

Additional Mitigating Circumstances

No Prior Discipline: Respondent was admitted to the practice of law in California on December 21, 1977 and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 35 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pre-trial 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].)

Physical difficulties: Respondent has provided documentation from a medical doctor showing that since 2008 he has suffered from severe knee osteoarthritis. In 2012 this condition worsened, caused severe pain and drastically limited respondent's mobility. As a result, respondent closed his law office, obtained attorneys to handle most of his cases, and reduced his caseload to less than 10 matters.

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).)

Std. 2.7 (c) states that suspension or reproof is the presumed sanction 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 client or clients.

In this case, respondent improperly withdrew and failed to communicate with his client in two matters from 2012-2015. In each instance, respondent did not communicate to his clients that he would take no further steps to represent them in their matter. There are two aggravating circumstances multiple acts, and harm to the clients. Respondent's 34 years in practice without discipline is a significant mitigating factor. The misconduct coincides with respondent's health issues which caused him to shut down his law office and turn over most of his caseload to other attorneys. Based on the misconduct and all the relevant factors, mitigation and aggravation, a private reproof with standard conditions is an appropriate disposition.

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.)

(Do not write above this line.)

In the Matter of: MERRILL EUGENE ZIMMERSHEAD	Case number(s): 16-O-10916; 16-O-14861
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>3/27/2017</u> Date	 Respondent's Signature	<u>Merrill E. Zimmershead</u> Print Name
<u>3 April 2017</u> Date	 Respondent's Counsel Signature	<u>Erica L.M. Dennings</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

(Do not write above this line.)

In the Matter of: MERRILL EUGENE ZIMMERSHEAD	Case Number(s): 16-O-10916; 16-O-14861
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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.

1. On p. 5, paragraph (7), check the box to indicate respondent must cooperate with the Office of Probation.
2. On p. 9, second to last paragraph, change "34 years" to "35 years" to reflect the number of years of practice without discipline, as specified on page 8, under the paragraph entitled "No Prior Discipline."

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 12, 2017

Date

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 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 San Francisco, On April 12, 2017, I deposited a true copy of the following document(s):

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

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


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

MERRILL EUGENE ZIMMERSHEAD
ATTORNEY AT LAW
6377 LITTLE UVAS RD
MORGAN HILL, CA 95037 - 9156

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

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 12, 2017.



Laretta Cramer
Case Administrator
State Bar Court



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

ATTEST August 15, 2018

State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

Cristina Scott

1 **DECLARATION OF SERVICE BY MAIL**

2 **RE:** **ZIMMERSHEAD**
3 **CASE NO:** **18-H-13510-PEM**

4 I, the undersigned, over the age of eighteen (18) years, whose business address and place of
5 employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105,
6 declare that I am not a party to the within action; that I am readily familiar with the State Bar of
7 California's practice for collection and processing of correspondence for mailing with the United
8 States Postal Service; that in the ordinary course of the State Bar of California's practice,
9 correspondence collected and processed by the State Bar of California would be deposited with
10 the United States Postal Service that same day; that I am aware that on motion of party served,
11 service is presumed invalid if postal cancellation date or postage meter date on the envelope or
12 package is more than one day after date of deposit for mailing contained in the affidavit. That in
13 accordance with the practice of the State Bar of California for collection and processing of mail,
14 I deposited or placed for collection and mailing in the City and County of San Francisco, on the
15 date shown below, a true copy of the within

11 **STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**
12 **AND ORDER APPROVING**

13 in a sealed envelope placed for collection and mailing at San Francisco, on the date shown
14 below, addressed to:

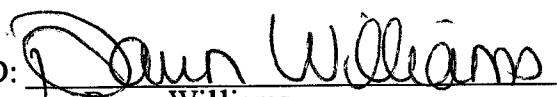
14 **Merrill Eugene Zimmershead**
15 **6500 Princevalle St**
16 **Gilroy, CA 95020-6702**

17 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

18 **N/A**

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

21 **DATED:** September 24, 2018

21 **SIGNED:** 
22 Dawn Williams
23 Declarant

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 October 5, 2018, I deposited a true copy of the following document(s):

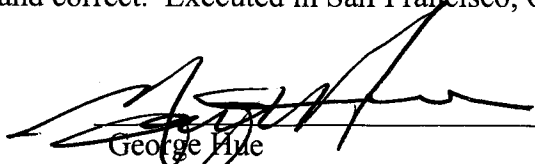
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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:
- MERRILL EUGENE ZIMMERSHEAD
6500 PRINCEVALLE ST
GILROY, CA 95020 - 6702
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Dina E. Goldman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 5, 2018.


George Hye
Court Specialist
State Bar Court