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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

ORIGINAL

Counsel for the State Bar	Case Number(s):	For Court use only
Cindy Chan **Deputy Trial Counsel** **845 S. Figueroa Street** **Los Angeles, California 90017** **(213) 765-1292** Bar # **247495**	**18-J-14405**	**PUBLIC MATTER** FILED SEP 21 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent **Arron B. Nesbitt** **15635 E Prentice Dr.** **Centenniel, Colorado 80015** **(303) 862-7129** Bar # **202948**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **ARRON B. NESBITT** Bar # **202948** 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 1, 1999**.

(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."

(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. One-half of the costs must be paid with Respondent's membership fees for each of the following years: two billing cycles following the effective date of discipline.

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:

(b) ☐ Date prior discipline effective:

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline:

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☒ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation. **see pages 13-14.**

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

(7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **see page 14.**

(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 13.**

(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.

(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:

No Prior Record of Discipline - see page 14.

Good Character - see page 14.

Pro Bono Work - see page 14.

Prefiling Stipulation - see page 14.

D. Recommended Discipline:

(1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **2 years**, the execution of that suspension is stayed, and Respondent is placed on probation for **2 years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **year** 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:**

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):

Payee	*Principal Amount*	*Interest Accrues From*

  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:

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):

Payee	*Principal Amount*	*Interest Accrues From*

  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 is a resident of the State of Colorado**.

(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 **one (1) year** 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 **six (6)** 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 .

(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:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ARRON B. NESBITT

CASE NUMBER: 18-J-14405

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. 18-J-14405 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On November 10, 2008, respondent was admitted to practice law in the State of Colorado.

2. On March 6, 2018, respondent, through his counsel, entered into a Stipulation in a disciplinary proceeding instigated against respondent by the State of Colorado (Case No. 17 PDJ 068) wherein he admitted to committing violations of Colorado Rules of Professional Conduct, rule 1.5(a) [Unreasonable Fees] and rule 8.4(c) [Misconduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation]. Respondent stipulated to discipline, including a one-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions. The parties stipulate that Exhibit 1 attached hereto is a true and correct copy of Colorado Rules of Professional Conduct, rules 1.5(a) and 8.4(c), consisting of 3 pages.

3. On March 9, 2018, the Supreme Court of Colorado issued an order approving the stipulation in Case No. 17 PDJ 068. The suspension was effective on April 13, 2018. The parties stipulate that Exhibit 2 attached hereto is a certified copy of the Stipulation and Order approving same, consisting of 21 pages.

4. The disciplinary proceeding in Colorado provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. From 2009 to March 2016, respondent worked as an attorney at the firm Taylor Anderson LLP. In 2012, he was made a partner at Taylor Anderson.

6. By January 2016, respondent had accepted a position at the law firm Wilson Elser Moskowitz Edleman & Dicker ("Wilson Elser") and in March 2016, he had left Taylor Anderson to join the firm.

7. The misconduct that gave rise to the disciplinary charges filed by the State of Colorado against respondent arises from respondent's representation of Great American Insurance ("Great American") during his tenure at Taylor Anderson.

The Lewis Matter

8. During his tenure at Taylor Anderson, the firm was serving as excess/monitoring counsel for Great American in *Katy Lewis, Deceased et al. v. Schnuck Markets* ("the Lewis matter"). An Indiana based law firm, Jackson Kelly PLLC, was serving as local counsel in the Lewis matter.

9. On February 2, 2016, an attorney with Jackson Kelly e-mailed respondent a 42-page report that she had drafted detailing her review of plaintiff depositions and medical records in the Lewis matter. The attorney also sent a copy of her report to Great American's insurance adjuster.

10. On February 26, 2016, respondent e-mailed a nearly identical report to Great American's insurance adjuster with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

11. Respondent subsequently submitted a statement of his billable hours to Taylor Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report, and that on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for his work.

12. Respondent also submitted a statement of his billable hours to Taylor Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of B. Lewis. Respondent billed $1,656 for this work.

13. On the same billing statement, respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of K. Lewis. Respondent billed $1,587 for this work.

14. Taylor Anderson subsequently billed Great American for respondent's time for these tasks.

15. At some point, Great American's insurance adjuster noticed that the report from respondent was nearly identical to that submitted by the attorney from Jackson Kelly on February 2, 2016 and brought it the attention of her supervisor.

16. On April 24, 2016, her supervisor e-mailed one of the equity partners at Taylor Anderson regarding the similarity in reports submitted by the attorney from Jackson Kelly and respondent.

17. Respondent was no longer at Taylor Anderson at this point, but Taylor Anderson conducted an internal investigation and audit of respondent's billing, and it was determined that Taylor Anderson had not received the deposition transcripts of B. Lewis and K. Lewis that respondent had allegedly reviewed on February 12, 2016 and February 18, 2016, respectively, until more than a month after respondent left the firm.

18. Taylor Anderson's internal audit also showed that respondent billed 5.8 hours, totaling $2,001 in fees, for attending a deposition in the Lewis matter on February 26, 2016, but a copy of the transcript does not reflect respondent's presence at said deposition. Respondent initially claimed that he "monitored" this deposition, meaning he dialed into the deposition but did not announce his present to the court reporter, which was common practice in the excess liability carrier industry. However, Taylor Anderson provided a phone log for February 26, 2018, which showed that respondent could not have monitored the deposition on the phone because he was on phone calls with various staff and clients at

the firm at the same time as the depositions. Furthermore, a review of respondent's cell phone records indicates that respondent did not use his cell phone to monitor the deposition.

19. Respondent now acknowledges that he did not monitor said deposition and attributes mistakes in this billing entry to confusing this matter with other matters he had been working on at the time.

20. Finally, respondent admits that the report submitted to Great American's insurance adjuster on February 26, 2016 was not the final, nor complete version of the report that should have included all of the additional work that he did and the revisions he intended. While he reviewed and revised the report, and billed for such work, respondent admits that the report that was saved into the system at Taylor Anderson, and subsequently sent to the client, was not a proper reflection of the time he billed for his work.

The Culp Matter

21. In a separate matter involving Great American, respondent billed 6.10 hours, totaling $2,104.50 in fees, for attending two depositions on September 17, 2015, but a transcript memorializing the attorneys who were present for the depositions indicate that respondent was not in attendance. As in the Lewis matter, respondent initially claimed that he also monitored the Culp depositions with his cell phone, but his cell phone records indicate that respondent did not use his cell phone to monitor the depositions on the date and time of said depositions.

22. Respondent now acknowledges that he did not monitor the Culp depositions and attributes mistakes in this billing entry to confusing this matter with other matters he had been working on at the time.

23. Taylor Anderson refunded Great American the amounts paid for respondent's disputed work.

CONCLUSIONS OF LAW:

24. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Colorado warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent stipulated to culpability for multiple offenses in the Colorado proceeding: (1) billing his client for a report that did not contain respondent's complete and full analysis in the Lewis matter; (2) billing for time monitoring a deposition in the Lewis matter that he did not actually monitor; and (3) billing for time monitoring two depositions in the Culp matter that he did not actually monitor. (*In the Matter of Bach* (1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) Additionally, respondent stipulated that he billed for time in reviewing transcripts that were neither sent to him by local counsel nor were in the possession of his law firm at the time he allegedly billed for said work.

Misrepresentations (Std. 1.5(e)): When respondent was confronted with the questioned billings, respondent asserted various explanations for the billings that were subsequently disproved.

With respect to the charges for attending depositions at which he was not present, respondent initially claimed that he "monitored" these depositions by dialing into the depositions, which was common practice in the excess liability carrier industry. However, a review of phone records showed that he did not in fact dial into these depositions. It was only after review of the phone records that disproved his explanations that respondent acknowledged that he did not monitor the depositions in question and that mistakes in billing were a result of confusion with other matters he had been working on at the time.

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): The improper billings amounted to the sum of $9,729. Even though Great American received a refund and respondent did not receive a financial benefit from the improper billings, there was still harm caused to Taylor Anderson by way of damage to its reputation with the client.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the State Bar of California on December 1, 1999. Effective January 1, 2003, respondent was voluntarily enrolled in inactive status, and then on January 1, 2004, respondent was in active status again up until May 17, 2018. Thus, respondent had over 14 years of discipline free practice as of September 17, 2015 when the alleged misconduct began.

Good Character: Respondent has submitted character letters from ten (10) witnesses, three of which are licensed attorneys, who have been acquainted with respondent in a personal and/or professional context anywhere from 4 to 35 years. Each of these witnesses declares that they are aware of the full extent of the misconduct and still believes respondent to be an honest and ethical person. Those who have worked with respondent attest that the improper billings were aberrational and they had not known him to engage in such misconduct on other occasions.

***Pro Bono* Work**: Respondent attests to (1) previously serving as an arbitrator for the Arizona State Bar for approximately 3 years where he is also licensed; (2) volunteering as a coach on his son's little league team; and (3) regularly volunteering at his children's schools as well as local food bank.

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

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re 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 was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent's misconduct in the other jurisdiction demonstrates a violation of Business and Professions Code, section 6106, which provides that "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

Standard 2.11 applies to the section 6106 violation, and provides that:

> "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Respondent billed for work he did not perform on at least four separate occasions. (*In the Matter of Bach* (1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].) When respondent was confronted with the questioned billings, respondent asserted various explanations for the billings that were later disproved. The improper billings amounted to the sum of $9,729. Even though Great American received a refund and respondent did not receive a financial benefit from the improper billings, there was still harm caused to Taylor Anderson by way of damage to its reputation with the client.

In mitigation, respondent has had more than 14 years of discipline free practice. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant mitigation].) Respondent has also provided character letters from ten different witnesses, three of which are attorneys, who have all been acquainted with respondent for a significant period of time. Each of these witnesses declares that they are aware of the full extent of the misconduct and still believes respondent to be an honest and ethical person. Those who have worked with respondent attest that the improper billings were aberrational and they had not known him to engage in such misconduct on other occasions. The quality and quantity of respondent's character evidence warrants significant mitigating weight, especially because serious consideration is given to the testimony of attorneys who have a

"strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319; *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 789 [significant mitigating weight to Maloney where he presented ten witnesses who were reasonably informed about his misconduct and all testified that their opinion of Maloney would not change if the misconduct were found to be true]; *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 810-811 [great weight given to testimony of seven character witnesses, three of which were attorneys, who testified that attorney was honest and forthright]; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403 [where testimony of eight character witnesses, five of whom were attorneys, was given great consideration in reinstatement proceeding].)

Finally, respondent has attested to some amount of community service, which is entitled to some mitigating weight. (*In the Matter of Reiss* (Rev. Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206 [modest mitigating weight based on respondent's own testimony that he had volunteered 10 to 15 hours per week as a coach or administrator for youth sports programs and volunteered at various other community organizations]; *In the Matter of Sullivan* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 189, 193 [community service established only by respondent's testimony entitled to "modest" mitigating weight]; *In the Matter of Mason* (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639 [mitigation for work as a fee arbitrator and volunteering at a center to assist those affected by Los Angeles area earthquake and center for abused or disturbed women].) However, his community service is not as extensive as those exhibited by the respondents in *Reiss*, *Sullivan*, and *Mason*, so respondent's *pro bono* activities are entitled to limited weight.

However, despite the mitigating circumstances, the seriousness of the misconduct and the aggravating circumstances do not justify a deviation from the Standards, and a two-year period of stayed suspension and two-year period of probation with conditions, including a one-year period of actual suspension is appropriate in this matter to achieve the purposes of discipline.

Case law supports this level of discipline. In *In the Matter of Berg* (1997) 3 Cal. State Bar Ct. Rptr. 725, the attorney was found culpable of violating section 6106 where he fraudulently billed an insurance company over a 14-month period in 41 cases. He regularly billed for work before it was performed, and on multiple occasions, billed 100 hours of personal work in a single day. He defrauded the insurance company of about $250,000. Berg was also found culpable of violating Rule 4-100(B)(4) where he failed to make disbursement to the client for a period of six weeks. Berg received minimal mitigation for his pro bono work. In aggravation, he had a prior private reproval, he refused to acknowledge any misconduct in his billing, and was found to have committed a pattern of misconduct. Based on the foregoing, the court concluded that nothing less than disbarment was appropriate.

However, a lesser sanction than that imposed in *Berg* is appropriate here. While respondent undoubtedly engaged in multiple acts of misconduct, he did not engage in a "pattern" of misconduct as that found in *Berg*. Unlike the attorney in *Berg*, respondent has no prior level of discipline and is not culpable of any other misconduct separate from the improper billings. Furthermore, there is no evidence that respondent lacks insight into his misconduct as was found in *Berg*.

Nonetheless, given the seriousness of the misconduct and all aggravating and mitigating circumstances, an actual suspension of a significant period of time is necessary to achieve the purpose of discipline. Based on the foregoing, a two-year period of stayed suspension and a two-year period of probation with conditions, including a one-year period of actual suspension is necessary to protect the public, the courts, and the legal profession; maintain high professional standards; and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of September 7, 2018, the discipline costs in this matter are $3,300. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

Respondent may not receive MCLE credit for completion of six (6) hours of MCLE required by section (E)(10) of this Stipulation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:	Case Number(s):
ARRON B. NESBITT	18-J-14405

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.

Date	Respondent's Signature	Print Name
9-10-18		ARRON B. NESBITT
Date	Respondent's Counsel Signature	Print Name
9-11-18		CINDY CHAN
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
ARRON B. NESBITT	18-J-14405

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:

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See 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).)**

9/21/18
Date

DONALD F. MILES
Judge of the State Bar Court

Colo. RPC 1.5

This document reflects changes received through August 27, 2018

Colorado* Court *Rules* > *COLORADO RULES OF CIVIL PROCEDURE* > *APPENDIX TO CHAPTERS 18 TO 20* > *THE COLORADO RULES OF PROFESSIONAL CONDUCT* > *CLIENT-LAWYER RELATIONSHIP

Rule 1.5. Fees.

(a)A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1)the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2)the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3)the fee customarily charged in the locality for similar legal services;

(4)the amount involved and the results obtained;

(5)the time limitations imposed by the client or by the circumstances;

(6)the nature and length of the ***professional*** relationship with the client;

(7)the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8)whether the fee is fixed or contingent.

(b)When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

(c)A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is otherwise prohibited. A contingent fee agreement shall meet all of the requirements of Chapter 23.3 of the ***Colorado Rules*** of Civil Procedure, "***Rules*** Governing Contingent Fees."

(d)Other than in connection with the sale of a law practice pursuant to ***Rule*** 1.17, a division of a fee between lawyers who are not in the same firm may be made only if:

(1)the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2)the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and

(3)the total fee is reasonable.

(e)Referral fees are prohibited.

(f)Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to ***Rule*** 1.15B(a)(1) until earned. If advances of unearned fees are in the form of property other than

funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to ***Rule*** 1.15A(a).

(g)Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited.

History

Source: (b) and Comment amended April 20, 2000, effective July 1, 2000; (d) amended and adopted April 18, 2001, effective July 1, 2001; entire ***rule*** and Comment amended and adopted May 30, 2002, effective July 1, 2002; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [7] amended and effective November 6, 2008; (b) amended and Comment [3A] repealed March 10, 2011, effective July 1, 2011; (f) and Comment [7] and [8] amended, effective April 6, 2016.

COLORADO COURT ***RULES***

End of Document

Colo. RPC 8.4

This document reflects changes received through August 27, 2018

***Colorado** Court **Rules** > **COLORADO RULES** OF CIVIL PROCEDURE > APPENDIX TO CHAPTERS 18 TO 20 > THE **COLORADO RULES OF PROFESSIONAL CONDUCT** > MAINTAINING THE INTEGRITY OF THE PROFESSION*

Rule 8.4. Misconduct.

It is ***professional*** misconduct for a lawyer to:

(a)violate or attempt to violate the ***Rules of Professional Conduct***, knowingly assist or induce another to do so, or do so through the acts of another;

(b)commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c)engage in ***conduct*** involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, or investigators, who participate in lawful investigative activities;

(d)engage in ***conduct*** that is prejudicial to the administration of justice;

(e)state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the ***Rules of Professional Conduct*** or other law;

(f)knowingly assist a judge or judicial officer in ***conduct*** that is a violation of applicable ***rules*** of judicial ***conduct*** or other law;

(g)engage in ***conduct***, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that ***conduct*** is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or

(h)engage in any ***conduct*** that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.

History

Source: Committee comment amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; (c) amended and adopted, effective September 28, 2017.

COLORADO COURT ***RULES***

End of Document

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203 Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: ARRON BURT NESBITT, # 40610	**FILED** MAR 06 2018 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO ▲COURT USE ONLY▲ Case Number: 17PDJ068
Geanne R. Moroye, #17476 Assistant Regulation Counsel Attorneys for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 457-5800x7865 Fax No.: (303) 501-1141 Victoria E. Lovato, # 31700 Respondent's Counsel S & D Law 1801 York St. Denver, CO 80206 Telephone: 303-399-3000	Supreme Court State of Colorado Certified to be a full, true and correct copy AUG 24 2018 Office of the Presiding Disciplinary Judge By

STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT

On this 6th day of March, 2018, Geanne R. Moroye, Assistant Regulation Counsel and Arron Burt Nesbitt, the Respondent who is represented by attorney Victoria E. Lovato in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: One-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions.

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on November 10, 2008, and is registered as an attorney upon the official

records of this Court, registration no. 40610. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has become public under the operation of C.R.C.P. 251.31(c) as amended.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent has read and studied the complaint, a true and correct copy of which is attached as **Exhibit 1**, and is familiar with the allegations therein. With respect to the allegations contained in the complaint, Respondent affirms under oath that the following facts and conclusions are true and correct:

a. From 2009 to March 2016, Respondent worked for Taylor|Anderson, LLP. In 2012, he was made partner. Kevin Taylor and Brent Anderson are equity partners at Taylor|Anderson.

b. On March 23, 2016, Respondent left Taylor|Anderson to join Wilson Elser Moskowitz Edelman & Dicker ("Wilson Elser").

The Lewis matter

c. During Respondent's tenure at Taylor|Anderson, the firm was serving as excess/monitoring counsel for Great American Insurance in *Katy Lewis, Deceased, et al v. Schnuck Markets* ("the Lewis matter"). An Indiana law firm, Jackson Kelly PLLC, was serving as local counsel.

d. On February 2, 2016, Angela Freel, an attorney with Jackson Kelly, emailed Respondent a 42-page report she drafted detailing her review of plaintiff depositions and medical records in the Lewis matter. Ms. Freel also sent a copy of her report to Ellen Biondo, an

insurance adjuster with Great American

e. On February 26, 2016, Respondent emailed a nearly identical report to Ellen Biondo, with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

f. Respondent subsequently submitted a statement of his billable hours to Taylor|Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report; and on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for this work.

g. Respondent also submitted a statement of his billable hours to Taylor|Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of Brian Lewis. Respondent billed $1,656 for this work.

h. On the same billing statement, Respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of Kathryn Lewis. He billed $1,587 for this work.

i. Taylor|Anderson subsequently billed Great American for Respondent's time for these tasks.

j. At some point, Ms. Biondo noticed that the report from Respondent was nearly identical to Ms. Freel's, and brought it to the attention of her supervisor, Jim Siessel.

k. On April 24, 2016, Mr. Siessel emailed Mr. Anderson questioning the similarity between the reports written by Ms. Freel and the Respondent.

l. Respondent had left the firm by then so they could not explain why the reports were so similar; however, in response to Mr. Siessel's email, Taylor|Anderson conducted an internal investigation and audit of Respondent's billing.

m. Respondent's billing included time for reviewing the deposition transcripts of Brian Lewis and Kathryn Lewis. After reviewing the firm database, Taylor|Anderson believes that those deposition transcripts were not received by the firm until more than a month after Respondent had left the firm.

n. Respondent would have received the Lewis transcripts from Ms. Freel's firm. Ms. Freel's records do not reflect that Jackson Kelly sent Respondent the transcripts.

o. Respondent admits that the two reports are very similar but he denies plagiarizing the status report. Although Respondent does not recall exactly what happened with the report, he

sent to Ms. Biondo, he surmises that he printed a copy of Ms. Freel's report and then made handwritten edits, which was his customary practice. That way, he could make the edits while he was traveling. Respondent believes he gave his handwritten edits to his assistant so that she could revise the report on the computer. Respondent states he likely did not follow up with his assistant to ensure that the edits were implemented, and he failed to look at the report carefully before sending it to Ms. Biondo.

p. Taylor|Anderson provided a screen shot from its database that captured Respondent's work on the report. The database shows that Respondent spent about three minutes working on the report before he emailed it to Ms. Biondo.

q. It is unlikely that Respondent would have been able to make the changes reflected in the report in three minutes. Respondent's assistant left the employ of Taylor|Anderson shortly after Respondent left the firm and her contact information is unknown.

r. Taylor|Anderson's internal audit showed that Respondent billed 5.8 hours for attending the deposition of Kenneth Mason on February 26, 2016; however, a copy of the transcript does not reflect Respondent's presence at the deposition. Respondent billed $2,001 for this work.

s. Respondent initially claimed that he "monitored" the Mason deposition, meaning that he dialed into the deposition but did not announce his presence to the court reporter. Respondent believes Ms. Freel was aware he was monitoring the deposition and that monitoring is common practice in the excess liability carrier industry.

t. Ms. Freel stated she has no independent recollection of whether Respondent monitored the Lewis depositions but stated that excess liability counsel, on occasion, monitor deposition without announcing their presence for the record.

u. Taylor|Anderson provided a phone log for February 26, 2016, the date of the Lewis depositions. The phone log shows that Respondent could not have been monitoring the Lewis deposition on the phone because at the time of the deposition he was on phone calls with various staff and clients at Taylor|Anderson, including a phone conference with Mr. Taylor.

v. When investigators asked Respondent about this discrepancy, he stated that he was monitoring the deposition using his cell phone in order to keep his office line free.

w. Respondent's cell phone records, for the date and time of the Lewis deposition, indicate that Respondent did not use his cell phone to monitor the deposition.

The Culp matter

x. Taylor|Anderson alleges that Respondent billed for attending the depositions of James and Carly Culp on September 17, 2015. A copy of the transcript memorializing the attorneys who were present for the deposition indicates that Respondent was not in attendance.

Respondent billed 6.10 hours, totaling $2,104.50 in fees, to the client for attending the depositions.

y. Respondent does not recall specifically how he monitored the Culp depositions, but he initially believed that he also monitored the depositions utilizing his cell phone.

z. Respondent's cell phone records, for the date and time of the Culp depositions, indicate that Respondent did not use his cell phone to monitor the depositions.

aa. Taylor|Anderson refunded Great American any amounts paid for Respondent's disputed work.

bb. Respondent states that while at Taylor|Anderson, he had a very heavy caseload and worked on numerous complex, high-exposure matters. He often billed in excess of 2,100 hours per year on multiple cases.

cc. By January 2016, Respondent had accepted a position with his new firm and knew he was leaving Taylor|Anderson sometime in March. He was trying to transition his practice while managing over 20 active cases which included a trial in mid-February, a significant mediation, and a corporate deposition in a large excessive wrongful death commercial trucking case in Texas.

dd. In retrospect, and after viewing the phone records, Respondent acknowledges that the records indicate he did not monitor the aforementioned depositions in the Lewis and Culp matters. Respondent realizes that he confused these matters with other cases he was working on at the time. This led to the mistakes in his billing entries. Respondent believed he had monitored the depositions over the phone and so informed OARC, but the phone records speak for themselves and upon review of those records, he realizes he was incorrect in his assertions to OARC and deeply regrets his error.

ee. Respondent admits that the report he sent to a former client was not the final, nor the complete version of the report that should have included all of the additional work that he did and the revisions he intended. Nevertheless, Respondent sent the report without reviewing it first, and this was a mistake. Only some of his revisions had been memorialized in the report. While he reviewed and revised this report, and billed for such work, he admits that the report that was saved into the system at Taylor|Anderson, and that he sent to the client, was not a proper reflection of that time.

ff. Respondent states that he was under an extreme amount of stress during the months leading to his departure from Taylor|Anderson. He was emotional because he was leaving a firm and mentors he had been associated with for years. He was managing an extremely heavy case load and doing his best to prepare for his new position while trying to provide thorough, competent work at Taylor|Anderson. Against this backdrop, he realizes he made mistakes in his billing. He did not do so knowingly or intentionally and had no incentive or motive to bill for time that was improper. He did not have to make billable hours. He had worked hard to establish a strong relationship with Great American who in the past highly valued

and respected his work. When he left Taylor|Anderson, Great American asked Respondent to handle some of their excess liability matters however due to his carelessness, his relationship with Great American has been ruined.

gg. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.5(a), and Colo. RPC 8.4(c).

7. Claim II of the Complaint charges Respondent with a violation of Colo. RPC 4.1(a) which states in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. Based on the discovery performed to date, Complainant moves that this alleged violation of the Colorado Rules of Professional conduct be dismissed. Respondent acknowledges that he billed for work that he did not perform, but did not do so knowingly. He failed to review the report he sent to Ms. Biondo, in its entirety, before submitting it. Had he done so, he would have seen that the changes he made to the report and his analysis were not included. In addition, Respondent believed he had monitored the depositions in the Lewis and Culp matters and did not realize that he did not monitor the depositions until he reviewed the phone records. Respondent acknowledges that he confused the Lewis and Culp depositions with other depositions that he monitored during this time frame. Further, the parties agree that the conduct forming the basis of this charge is better addressed by the Rule 8.4(c) violation discussed elsewhere in this Stipulation.

8. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of $224.00 (a copy of the statement of costs is attached hereto as **Exhibit 2**) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from thirty-five (35) days after the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

9. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

10. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of one-year-and-one-day suspension, with nine months served and the

remainder stayed upon successful completion of a two-year period of probation with conditions, may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

11. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness(es) in the matter(s) of the proposed disposition.

12. Respondent's counsel, Victoria E. Lovato, hereby authorizes Respondent, Arron Burt Nesbitt, and the non-lawyer individual in the Office of Attorney Regulation Counsel who is responsible for monitoring the conditions set forth herein to communicate directly concerning scheduling and administrative issues or questions. Respondent's counsel will be contacted concerning any substantive issue which may arise.

PRIOR DISCIPLINE

13. Respondent has no prior discipline.

ANALYSIS OF DISCIPLINE

14. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA *Standards*"), §3.0, the Court should consider the following factors generally:

a. The duty violated: Respondent violated his duty to not charge an unreasonable fee as well as his duty of honesty.

b. The lawyer's mental state: Reckless.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent caused potential injury to his client by billing the client for monitoring depositions he did not monitor and for billing his client for a report that did not contain Respondent's complete and full analysis.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: multiple offenses and substantial experience in the practice of law. ABA *Standards* §9.22(d),(i). Factors in mitigation include: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and remorse. ABA *Standards* §9.32(a),(b),(e),(l).

15. Pursuant to ABA *Standard* 4.6, suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Pursuant to ABA

Standard 7.2, suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.[1]

16. The Colorado Supreme Court has imposed suspensions in cases involving attorneys who knowingly over-billed their clients. In *People v. Kotarek*, 941 P.2d 925 (Colo. 1997), the Supreme Court issued a three-month suspension where Kotarek submitted false time sheets and requests for reimbursement. Kotarek was under a large amount of personal stress, which mitigated the suspension down. Though *Kotarek* involved the application of Standard 9.32(h) for Kotarek's mental disability or impairment – a factor not present here – Kotarek acted with a knowing mental state when he billed for traveling to, and conducting, depositions that he knew did not take place. Kotarek received and cashed a reimbursement check for the fictitious travel and depositions. The *Kotarek* decision involved a conditional admission of misconduct and a stipulation of a three to six-month suspension, but did not explicitly discuss any of the ABA *Standards*. Likewise, in *People v. Walker*, 832 P.2d 935, 936–37 (Colo. 1992), the Colorado Supreme Court imposed a 90-day suspension where an attorney submitted false reimbursement vouchers in six juvenile cases, where he double-billed, triple-billed, and quadruple-billed travel time, in-court time, out-of-court time, and mileage charges on six days over a six-month period. Like *Kotarek*, *Walker* involved a conditional admission of misconduct and a stipulated range of discipline, and it did not explicitly discuss what ABA *Standards* it applied. Unlike the Respondent, the lawyers in *Kotarek* and *Walker* knowingly engaged in a pattern of false billing misconduct on multiple occasions over a period of time. *See also In re Sather*, 3 P.3d 403, 416 (Colo. 2000) (six-month suspension for knowingly misrepresenting fees paid as nonrefundable). In the matter of *People v. Cook*, 2017 WL 3587985 (Colo. OPDJ August 10, 2017), Cook was an associate at a law firm who, when faced with the prospect of failing to meet the firm's yearly billable hour expectation, knowingly falsified sixty time entries for a one-month billing cycle. In some entries she inflated legitimate time that had not yet been submitted; other entries she fabricated entirely. Her fabricated billing reflected nearly $40,000.00 in time that she had not worked. The court approved a conditional admission of misconduct and a stipulation to a nine-month suspension.[2]

Suspension is the presumptive sanction under *Standards* 4.6 and 7.2 of the American Bar Association *Standards for Imposing Lawyer Sanctions*. The ultimate sanction imposed . . . generally should be greater than the sanction for the most serious misconduct.[3] A served

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[1] Notably, Rule 8.4(c) does not require proof of any specific state of mind. *Compare, e.g.*, Colo. RPC 3.4(c) (prohibiting a lawyer from "knowingly" disobeying a court order). As such, and as clarified by Comment [7A] to Rule 1.0, the Colorado Supreme Court's case law holding that a reckless mental state is equivalent to a knowing mental state for purposes of finding culpability continues to apply in cases involving Rule 8.4(c)

[2] The parties are aware that Presiding Disciplinary Judge and disciplinary hearing board opinions offer guidance but do not have precedential effect. *In re Rosen*, 69 P.3d 43, 48 (Colo. 2003). For purposes of analyzing proportionality, however, citation to such an opinion is useful in this case.

[3] ABA Annotated *Standards for Imposing Lawyer Sanctions* xx (2015).

suspension of six-months typically is viewed as a baseline sanction, to be adjusted upward or downward in consideration of aggravating or mitigating factors.[4]

17. Considering all of the factors described above, as applied to this case, Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 251.7(a).

CONDITIONS

18. The Initial, Served Suspension. Respondent must first complete the served portion of this suspension and comply with the requirements imposed by C.R.C.P. 251.28 and 251.29 that are applicable to the length of this served suspension. Once Respondent has successfully completed the served portion of the suspension, and is reinstated from that period of suspension pursuant to C.R.C.P. 251.29, then Respondent's probationary period shall begin.

19. Probation. The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). Successful completion of all these terms shall stay the imposition of the remaining 3-months and one day suspension.

a. Respondent shall be on probation for a 2 year period of time.

b. Mandatory Rule Condition. During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 251.7(b) ("The conditions [of probation]...shall include no further violations of the Colorado Rules of Professional Conduct").

c. Respondent shall attend and successfully pass the one-day ethics school sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved. Respondent shall register and pay the costs of ethics school within thirty-five (35) days of the date this Stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. Respondent may obtain the registration form for the ethics school on-line at www.coloradosupremecourt.com. (Go to the section for Lawyers, Practice Resources, and then Practice Management. The instructions for registering are on the registration forms) Instructions for registering are on the registration form.

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[4] *See, e.g., Cummings*, 211 P.3d 1136, 1140 (Alaska 2009) (imposing a three-month suspension based on a six-month "baseline" set forth in ABA *Standard* 2.3, considered in conjunction with applicable mitigating factors); *In re Moak*, 71 P.3d 343, 348 (Ariz. 2003) (noting that the presumptive suspension period is six-months); *In re Stanford*, 48 So.3d 224, 232 (La. 2010) (imposing a six-month deferred suspension after considering the "baseline sanction" of six-months served and deviating downward from that sanction based on one aggravating factor, four mitigating factors, and no actual harm caused); *Hyman v. Bd. of Prof'l Responsibility*, 437 S.W. 435, 449 (Tenn. 2014) (describing a six-month served suspension as a baseline sanction, to be increased or decreased based on aggravating or mitigating circumstances); *In re McGrath*, 280 P.3d 1091, 1101 (Wash. 2012) ("If suspension is the presumptive sanction, the baseline period of suspension is presumptively six months.").

20. **Violation of Conditions.** If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. *See* C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

21. **Successful Completion of Conditions.** Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. *See* C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a one-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a one-year-and-one-day suspension, with nine months served and the remainder stayed upon successful completion of a two-year period of probation with conditions. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be thirty-five (35) days after the date of entry of the order (see C.R.C.P. 251.28(a), in order to allow Respondent to wind down the practice).

Arron Burt Nesbitt, Respondent; Victoria E. Lovato, attorney for Respondent; and Geanne R. Moroye, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.

[The remainder of this page left intentionally blank]

Arron Burt Nesbitt
15635 E. Prentice Dr.
Centennial,CO 80015
Telephone: 303-862-7129

Respondent

STATE OF COLORADO)
)ss:
COUNTY OF Denver)

Subscribed and sworn to before me this 6th day of March, 2018, by Arron Burt Nesbitt the Respondent.

Witness my hand and official seal.

My commission expires:
March 20, 2020

LAURA DEVICO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084009514
My Commission Expires March 20, 2020

Notary Public

Geanne Rae Moroye, #17476
Assistant Regulation Counsel
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Telephone: (303) 457-5800x7856
Attorney for the Complainant

Victoria E Lovato, #31700
S & D Law
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Telephone: 3033993000
Attorney for the Respondent

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203 Complainant: THE PEOPLE OF THE STATE OF COLORADO Respondent: ARRON BURT NESBITT, # 40610 Geanne R. Moroye, #17476 Assistant Regulation Counsel James C. Coyle, #14970 Attorney Regulation Counsel Attorneys for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 457-5800x7856 Fax No.: (303) 501-1141 Email: G.Moroye@csc.state.co.us	**FILED** SEP 29 2017 PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO ▲COURT USE ONLY▲ Case Number: 17 PDJ 068

COMPLAINT

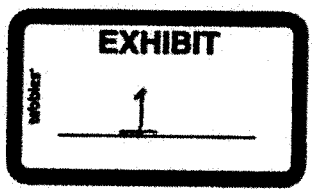
THIS COMPLAINT is filed pursuant to the authority of C.R.C.P. 251.9 through 251.14, and it is alleged as follows:

Jurisdiction

The respondent has taken and subscribed the oath of admission, was admitted to the bar of this Court on November 10, 2008, and is registered upon the official records of this Court, registration no. 40610. He is subject to the jurisdiction of this Court in these disciplinary proceedings. The respondent's registered business address is 1225 17th Street, Suite 2750, Denver, Colorado 80202.

General Allegations

1. From 2009 to March 2016, Respondent worked for Taylor|Anderson, LLP. In 2012, Respondent was made partner. Kevin Taylor and Brent Anderson are equity partners at Taylor|Anderson.



2. On March 23, 2016, Respondent left Taylor|Anderson to join Wilson Elser Moskowitz Edelman & Dicker.

The Lewis matter

3. During Respondent's tenure at Taylor|Anderson, the firm was serving as excess/monitoring counsel for Great American Insurance in the matter of *Katy Lewis, Deceased, et al v. Schnuck Markets* ("the Lewis matter").

4. An Indiana law firm, Jackson Kelly PLLC, was serving as local counsel.

5. On February 2, 2016, Angela Freel, an attorney with Jackson Kelly, emailed Respondent a 42-page report she drafted detailing her review of plaintiff depositions and medical records in the Lewis matter.

6. Ms. Freel also sent her report to Ellen Biondo, an insurance adjuster with Great American Insurance.

7. On February 26, 2016, Respondent emailed a nearly identical report to Ellen Biondo with minor changes he made to the opening and closing paragraphs, minor changes in the body of the report and a change in the valuation of the case. Respondent wrote, "Attached please find an updated status report and analysis."

8. Respondent subsequently submitted a statement of his billable hours to Taylor|Anderson indicating that on February 19, 2016, he had spent 3.6 hours working on the report; and on February 22, 2016, he had spent 3.3 hours working on the report. Respondent's billing rate was $345 per hour. Respondent billed $2,380.50 for this work.

9. Respondent also submitted a statement of his billable hours to Taylor|Anderson indicating that on February 12, 2016, he had spent 4.8 hours reviewing and analyzing the deposition transcript and medical records summary of Brian Lewis. Respondent billed $1,656 for this work.

10. On the same billing statement, Respondent indicated that on February 18, 2016, he spent 4.6 hours analyzing the deposition transcript and medical records summary of Kathryn Lewis. He billed $1,587 for this work.

11. Taylor|Anderson subsequently billed Great American Insurance for Respondent's time for these tasks.

12. Ms. Biondo, the adjuster at Great American Insurance, noticed that the report from Respondent was nearly identical to the report she had received from Ms. Freel and brought it to the attention of her supervisor, Jim Siessel.

13. On April 24, 2016, Mr. Siessel emailed Mr. Anderson to ask if Mr. Anderson

could explain why Respondent's report was "verbatim" to Ms. Freel's report.

14. By April 24, 2016, Respondent had left Taylor|Anderson.

15. In response to Mr. Siessel's email, Taylor|Anderson conducted an internal investigation and audit of Respondent's billing.

16. Mr. Siessel contacted Respondent to inquire about the reports.

17. The internal investigation established Respondent's billing included time for reviewing the deposition transcripts of Brian Lewis and Kathryn Lewis.

18. Taylor|Anderson did not receive the Brian Lewis and Kathryn Lewis deposition transcripts until after Respondent had left the firm.

19. Taylor|Anderson's database reflects that Respondent was the only employee to work on the report.

20. Respondent billed 5.8 hours for attending the deposition of Kenneth Mason on February 26, 2016. Respondent billed $2,001 for this work.

21. A copy of a transcript for the deposition of Kenneth Mason does not reflect Respondent's presence at the deposition.

22. Respondent asserts that he monitored the Mason deposition, meaning that he dialed into the deposition but did not announce his presence to the court reporter.

23. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his office phone at Taylor|Anderson.

24. Respondent had previously entered his appearance in the Lewis matter, in advance of the Mason deposition.

25. Ms. Freel has no independent recollection of whether Respondent monitored the deposition.

26. The Taylor|Anderson office phone records for February 26, 2016 reflect Respondent was not monitoring the Mason deposition on his office phone. At the time of the deposition Respondent was on his office phone on calls with various staff and clients at Taylor|Anderson, including a phone conference with Mr. Taylor.

27. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Mason deposition on his cell phone.

28. Respondent's cell phone records for the date and time of the Mason deposition

indicate that Respondent did not use his cell phone to monitor the deposition.

The Culp matter

29. While working at Taylor|Anderson, Respondent billed for attending the depositions of James and Carly Culp on September 17, 2015.

30. A copy of the transcript identifying the attorneys who were present for the depositions indicates that Respondent was not in attendance.

31. Respondent billed 6.10 hours, totaling $2,104.50 in fees, to Great American Insurance for attending the depositions.

32. Respondent entered his appearance as excess liability counsel in the Culp matter on May 19, 2014.

33. According to Respondent, he was not in attendance for the depositions, but rather monitored the Culp depositions by phone.

34. On January 10, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his office phone at Taylor|Anderson.

35. The Taylor|Anderson office phone records for September 17, 2015 reflect Respondent was not monitoring the Culp depositions on his office phone.

36. On March 14, 2017, during his interview with investigators from the Office of Attorney Regulation Counsel, Respondent indicated that he monitored the Culp depositions on his cell phone.

37. Respondent's cell phone records for the date and time of the Culp depositions indicate that Respondent did not use his cell phone to monitor the depositions.

CLAIM I
Colo. RPC 1.5(a): Unreasonable Fees

38. Paragraphs 1 through 37 are incorporated as if fully set forth.

39. Colo. RPC 1.5(a) provides that "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

40. In the Lewis matter and Culp matters, Respondent's charges were unreasonable as he charged for work that he did not perform.

41. By such conduct, Respondent violated Colo. RPC 1.5(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM II
Colo. RPC 4.1(a): Truthfulness in Statements to Others

42. Paragraphs 1 through 37 are incorporated as if fully set forth.

43. Colo. RPC 4.1(a) provides "In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person."

44. In the Lewis matter and Culp matters, Respondent knowingly made a false statement of material fact to a third person when he submitted billing for work that he had not done. In the Lewis matter, Respondent also submitted a report he purportedly authored which was actually, in large part, written by another individual.

45. By such conduct, Respondent violated Colo. RPC 4.1(a).

WHEREFORE, Complainant prays at the conclusion of this Complaint.

CLAIM III
Colo. RPC 8.4(c): Misconduct

46. Paragraphs 1 through 37 are incorporated as if fully set forth.

47. Colo. RPC 8.4(c) provides it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

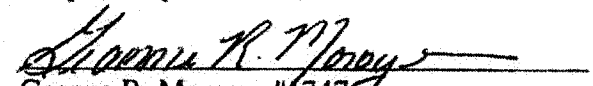
48. Respondent violated this rule and engaged in dishonest conduct by misrepresenting he did work on the Lewis and Culp matters, and by billing Great American Insurance for the work. For such conduct, Respondent violated Colo. RPC 8.4(c).

49. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel that he utilized his office phone to monitor the Lewis and Culp depositions. Office phone records from Taylor|Anderson indicate Respondent did not use his office phone to monitor the Lewis or Culp depositions. Respondent violated this rule and engaged in dishonest conduct by stating to investigators with the Office of Attorney Regulation Counsel, in a subsequent interview, that Respondent utilized his cell phone to monitor the Lewis and Culp depositions. Respondent's cell phone records, indicate Respondent did not use his cell phone to monitor the depositions. For such conduct Respondent violated Colo. RPC 8.4(c).

WHEREFORE, the people pray that the respondent be found to have engaged in misconduct under C.R.C.P. 251.5 and the Colorado Rules of Professional Conduct as specified above; the Respondent be appropriately disciplined for such misconduct; the Respondent be required to take any other remedial action appropriate under the circumstances; and the Respondent be assessed the costs of this proceeding.

DATED this 28th day of September, 2017.

Respectfully submitted,

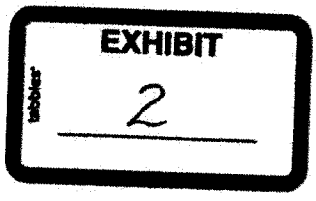


Geanne R. Moroye, #17476
Assistant Regulation Counsel
James C. Coyle, #14970
Attorney Regulation Counsel
Attorneys for Complainant

Statement of Costs

Arron Nesbitt
17PDJ068

3/2/2018	Administrative Fee	$	224.00
	AMOUNT DUE	$	224.00



SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** ARRON BURT NESBITT, #40610	Case Number: **17PDJ068**

ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS UNDER C.R.C.P. 251.22

Before the Presiding Disciplinary Judge ("the Court") is a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct" filed by Geanne R. Moroye, Office of Attorney Regulation Counsel ("the People"), and Victoria E. Lovato, counsel for Arron Burt Nesbitt ("Respondent"), on March 6, 2018. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

Upon review of the case file and the stipulation, the Court **ORDERS**:

1. The stipulation is **APPROVED.**

2. **ARRON BURT NESBITT**, attorney registration number **40610**, is **SUSPENDED** from the practice of law for a period of **ONE YEAR AND ONE DAY, WITH NINE MONTHS TO BE SERVED AND THE REMAINDER TO BE STAYED** upon the successful completion of a **TWO-YEAR** period of **PROBATION**, subject to the conditions set forth in paragraph 19 of the stipulation.

3. Respondent violated Colo. RPC 1.5(a) and 8.4(c).

4. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.

5. No later than fourteen days after the effective date of the suspension, Respondent **SHALL** comply with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, inter alia, to notification of clients and of other jurisdictions where the attorney is licensed.

6. Should Respondent wish to resume the practice of law after his suspension, he must submit to the People, within twenty-eight days before the expiration of the period of suspension, an affidavit complying with C.R.C.P. 251.29(b).

7. If, during the period of probation, the People receive information that any probationary condition may have been violated, the People may file a motion under C.R.C.P. 251.7(e) specifying the alleged violation and seeking an order that requires Respondent to show cause why the stay should not be lifted and the sanction activated. Under C.R.C.P. 251.7(e), the filing of such a motion tolls any period of suspension and probation until final action. When the alleged violation in a revocation hearing is a respondent's failure to pay restitution or costs, evidence of failure to pay constitutes *prima facie* evidence of a violation.

8. Per C.R.C.P. 251.7(f), no more than twenty-eight days and no fewer than fourteen days prior to expiration of the period of probation, Respondent shall file an affidavit with the People attesting to compliance with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order terminating probation. Upon receipt of this notice and absent objection from the People, the Court will issue an order terminating probation, effective the date the period of probation expires.

9. Under C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of $224.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Office. Statutory interest shall accrue from thirty-five days after the date of this order. Should Respondent fail to pay the aforementioned costs within thirty-five days, Respondent will be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

10. The People move for dismissal of Claim II of the complaint. The Court **GRANTS** that motion and **DISMISSES** Claim II of the complaint.

11. The Court **GRANTS** the People's "Motion to Vacate Hearing" and **VACATES** the hearing scheduled for April 3-5, 2018.

THIS ORDER IS ENTERED THE 9th DAY OF MARCH, 2018. THE EFFECTIVE DATE OF THE SUSPENSION IS THE 13th DAY OF APRIL, 2018.

William R Lucero

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

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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 September 21, 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 Los Angeles, California, addressed as follows:

ARRON B. NESBITT
15635 E PRENTICE DR
CENTENNIAL, CO 80015 - 4264

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

CINDY W.Y. CHAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2018.

Mazie Yip
Court Specialist
State Bar Court