



ORIGINAL

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**State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION**

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Bar # 297430

Case Number(s):
18-O-11318; 18-O-11661;
18-O-12360

For Court use only

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Bar # 124510

PUBLIC MATTER

Submitted to: **Settlement Judge**

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

In the Matter of:
MATTHEW WILLIAM ODGERS

STAYED SUSPENSION; NO ACTUAL SUSPENSION

Bar # 290722

PREVIOUS STIPULATION REJECTED

A Member of the State Bar of California
(Respondent)

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 26, 2013**.
- (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 **17** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
 - Costs are entirely waived.

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

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

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- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Page 13.**
- (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 12-13.**
- (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.

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- (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. **See Page 13-14.**
- (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. **See Page 14.**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial Stipulation. See Page 13
Emotional/Physical Difficulties. See Page 13-14.

D. Recommended Discipline:

Stayed Suspension:

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

- (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
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12) **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) **Other:** Respondent must also comply with the following additional conditions of probation:
- (14) **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent

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with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(15) **The following conditions are attached hereto and incorporated:**

Financial Conditions

Medical Conditions

Substance Abuse Conditions

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

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

- (1) **Multistate Professional Responsibility Examination Within One Year:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

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In the Matter of: MATTHEW WILLIAM ODGERS	Case Number(s): 18-O-11318; 18-O-11661; 18-O-12360
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Medical Conditions

- a. **Mental Health Conditions:** Respondent must obtain psychiatric or psychological counseling or treatment to address mental health issue(s), at Respondent's own expense, from a duly licensed psychiatrist, psychologist, clinical social worker, or marriage and family therapist (mental health professional), and must provide such licensed individual with a copy of this stipulation. However, if such mental health professional determines at any time that no additional counseling or treatment is necessary, Respondent may furnish a written statement from the mental health professional to that effect to the Office of Probation. Respondent must commence counseling or treatment no later than 30 days after the effective date of the Supreme Court order imposing discipline in this proceeding and must comply with any counseling or treatment plan developed by the mental health professional. Respondent must certify under penalty of perjury in each quarterly report and in the final report that Respondent has obtained and complied with such psychiatric or psychological counseling or treatment plan during the period covered by such report. Within 60 days of written notice from the Office of Probation, Respondent must provide satisfactory evidence of such compliance to the Office of Probation. The Office of Probation may require that such satisfactory evidence be a letter from the mental health professional on such individual's letterhead, or on a form approved by the Office of Probation, that Respondent has obtained such psychiatric or psychological counseling or treatment and that Respondent has complied with a counseling or treatment plan during the period specified in the written notice.
- b. **Medical Waivers:** Within 45 days after the effective date of the SELECT ONE order imposing discipline in this matter, Respondent must provide the Office of Probation with an authorization to disclose and obtain medical information (medical waiver) and access to all of Respondent's medical records related to Respondent's SELECT ONE for the period . Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing, or adjudicating this probation/reproval condition.
- c. **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MATTHEW WILLIAM ODGERS

CASE NUMBER: 18-O-11318; 18-O-11661; 18-O-12360

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-O-11318 (Complainant: Shannika Dao)

FACTS:

1. Dr. Shannika Dao and her husband, Moussa Dao, signed a fee agreement with respondent on May 16, 2017.
2. The Daos paid respondent \$1,200 on May 24, 2017, to create a corporation named Dao Dental Corporation by: filing the Articles of Incorporation, creating custom bylaws, initiating corporate formalities, preparing a statement of information, and acting as the corporation’s registered agent for one year.
3. The Daos attempted to contact respondent approximately nineteen times by telephone and email from May 2, 2017 to January 26, 2018. Respondent failed to timely respond to the Daos’ attempts to communicate with him.
4. Respondent failed to perform the legal services he was hired to perform.
5. On January 22, 2018, Mr. Dao contacted respondent and requested a full refund of the \$1,200 the Daos paid him.
6. On March 5, 2018, Dr. Dao terminated respondent by email and requested the return of her file and an accounting of their advance fee.
7. Respondent failed to respond to the Daos’ requests and failed to provide the requested items.
8. State Bar Investigator Sherri Carter wrote to respondent seeking a response to the Dao’s allegations on March 7, 2018, March 26, 2018, and May 17, 2018.
9. Carter also spoke with respondent’s receptionist and left a message asking for a return call on respondent’s direct line on April 12, 2018.
10. Respondent failed to respond to the State Bar’s efforts to reach him.

11. Dr. Dao received a full refund check in the mail on April 24, 2018, which successfully cleared by May 7, 2018.

12. Respondent mailed a second \$1,200 refund check to Dr. Dao by certified mail on October 1, 2018.

CONCLUSIONS OF LAW:

13. On May 16, 2017, Dr. Shannika Dao employed respondent to perform legal services, namely the formation of a new corporation by filing Articles of Incorporation, creating custom bylaws, initiating corporate formalities, preparing a statement of information, and acting as registered agent for one year, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

14. Respondent failed to respond promptly to approximately nineteen telephone calls and/or emails regarding reasonable status inquiries by respondent's client, Dr. Shannika Dao, and/or her husband Moussa Dao, between May 2, 2017 and March 5, 2018 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

15. Respondent failed to promptly release, after termination of respondent's employment on March 5, 2018, to respondent's client, Dr. Shannika Dao, all of the client's papers and property following the client's request for the client's file on March 5, 2018, in willful violation of the Rules of Professional Conduct, former rule 3-700(D)(1).

16. On May 24, 2017, respondent received from respondent's client, Dr. Shannika Dao, the sum of \$1,200 as advanced fees for legal services to be performed. Respondent thereafter failed to render an appropriate accounting to the client regarding those funds following the termination of respondent's employment on March 5, 2017, in willful violation of the Rules of Professional Conduct, former rule 4-100(B)(3).

17. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters of March 7, 2018, March 26, 2018, and May 17, 2018, and telephone message left on April 12, 2018, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 18-O-11318, in willful violation of Business and Professions Code, section 6068(i).

Case No. 18-O-11661 (Complainant: Therese Dao)

FACTS:

18. Therese Dao hired respondent on December 5, 2017, to formulate a business contract. Ms. Dao paid respondent \$2,000 by credit card as an advance fee for his legal services.

19. Ms. Dao attempted to contact respondent through approximately five telephone calls and five emails between December 14, 2017 to January 19, 2018. Respondent failed to timely respond to Ms. Dao's attempts to communicate with him.

20. Respondent failed to perform the legal services that Ms. Dao hired him to perform.

21. Ms. Dao terminated respondent by email on January 6, 2018.

22. On January 6, 17, and 19, 2018, Ms. Dao requested a refund of the \$2,000 advance fee she paid.

23. State Bar Investigator Sherri Carter wrote to respondent seeking a response to Ms. Dao's allegations on April 16, 2018 and May 10, 2018.

24. Carter also spoke with respondent's receptionist and left a message asking for a return call on respondent's direct line on April 12, 2018.

25. Respondent failed to respond to any of the State Bar's attempts to reach him.

26. Ms. Dao disputed respondent's charge with her credit card company on May 11, 2018.

27. Respondent did not challenge the dispute.

28. Ms. Dao received a chargeback to her credit card in the amount she paid respondent.

CONCLUSIONS OF LAW:

29. On December 5, 2017, Therese Dao employed respondent to perform legal services, namely to formulate a business contract, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A), by failing to create the expected contract.

30. Respondent failed to respond promptly to approximately five telephone calls and five emails regarding reasonable status inquiries by respondent's client, Therese Dao, between December 14, 2017 to January 19, 2018 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

31. On December 5, 2017 respondent received advanced fees of \$2,000 from a client, Therese Dao, to formulate a business contract. Respondent failed to formulate any business contract, or perform any legal services for the client, and therefore earned none of the advanced fees paid. Respondent failed to return promptly, upon respondent's termination of employment on January 6, 2018 any part of the \$2,000 fee to the client, in willful violation of the Rules of Professional Conduct, former rule 3-700(D)(2).

32. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters of April 16, 2018 and May 10, 2018, and telephone message left on April 12, 2018, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 18-O-11661, in willful violation of Business and Professions Code, section 6068(i).

Case No. 18-O-12360 (Complainant: Jayesh Ghia)

33. Jayesh Ghia and his wife, Dr. Kinnari Ghia, hired respondent on December 6, 2017, to dissolve the Kinnari Ghia, DDS Dental Corporation before the end of 2017. The Ghias paid respondent \$950 for his legal services.

34. From December 14, 2017 and February 15, 2018, the Ghias sent respondent approximately nine different email messages. Respondent failed to timely respond to the Ghias' attempts to communicate with him.

35. Respondent filed incorrect or incomplete forms to dissolve the corporation on December 28, 2018.

36. The corporation remained active at least through April 19, 2018, meaning that respondent did not complete the work as specified in the fee agreement.

37. The Ghias never formally terminated respondent, hoping that he would eventually complete the dissolution of their corporation. Respondent never completed the legal services that the Ghias hired him to do.

38. State Bar Investigator Sherri Carter wrote to respondent seeking a response on April 19, 2018 and May 10, 2018.

39. Carter also spoke with respondent's receptionist and left a message asking for a return call on respondent's direct line on April 12, 2018.

40. Respondent failed to respond to any of the State Bar's attempts to reach him.

41. Respondent mailed a \$975 refund check to Dr. Ghia by certified mail on October 1, 2018.

CONCLUSIONS OF LAW:

42. On December 6, 2017, Dr. Kinnari Ghia employed respondent to perform legal services, namely the dissolution of her dental corporation by filing the necessary documents to dissolve the corporation, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, former rule 3-110(A).

43. Respondent failed to respond promptly to approximately nine email messages regarding reasonable status inquiries by respondent's client, Dr. Kinnari Ghia, and/or her husband Jayesh Ghia, between December 14, 2017 to February 15, 2018 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

44. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters of April 19, 2018 and May 10, 2018, and telephone message left on April 12, 2018, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case no. 18-O-12360, in willful violation of Business and Professions Code, section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): From May 2017 to March 2018, respondent committed approximately 12 acts of misconduct related to three client matters. These include failing to perform competently, failing to communicate, failing to account for fees, failing to release a client file, failing to

refund unearned fees, and failing to cooperate with a State Bar investigation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-7 [three acts of misconduct constitute multiple acts of misconduct].) Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.) However, the number of acts and ten-month timeframe do not appear to establish the numerosity and extended time period sufficient to demonstrate a pattern of misconduct.

Significant Harm (Std. 1.5(j)): As a result of respondent's misconduct, his clients were harmed. Despite respondent having been paid a flat fee to perform certain tasks, Dr. Dao was forced to hire a new attorney to complete the work without the benefit of a refund at the time. The Ghias face unexpected potential taxes and tax preparation expenses due to the fact that their corporation was not dissolved as promised. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [significant harm found where client had to hire new counsel, incurred significant amount of attorney's fees, and suffered three years of misery in an unsuccessful attempt to reclaim her condo].) On the other hand, respondent has since made restitution to each client, slightly reducing the weight of this factor.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent stipulated to all facts and conclusions of law presented by the Office of Chief Trial Counsel, thereby acknowledging and taking responsibility for his misconduct and obviating the need for trial and saving State Bar resources. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigating credit was given for entering into a stipulation as to facts and culpability].)

Emotional Difficulties (Std. 1.6(d)) & Family Problems: Respondent suffered from extreme difficulties which were directly responsible for his misconduct. First, a series of traumatic events affecting his family caused his depression, an issue which he has been treating with therapy and medication with varying success since 2008. This diagnosis and the related family issues have at times affected his legal practice, e.g., he found it difficult to concentrate and focus on work. In addition, respondent's legal practice grew rapidly in 2017, with four offices to maintain. This created additional stress through the rapidly increased workload. Finally, he and his girlfriend (and assistant) of seven years, whose daughter respondent had been acting as a step-parent to, broke up yet continued to work together from February 2017 until June 2017 and to live together from February 2017 until August 2017. During this time in 2017, respondent's depression returned.

In 2018, respondent recognized that changes were needed and determined to slowdown his marketing, downsize his practice to one office, get a new assistant, and be more selective with new clients. He also developed relationships with other attorneys to help him and set in place new office systems and schedules designed to facilitate efficiency and better communication with clients, while allowing him time to care for himself as well.

On October 4, 2018, Dr. Stephen Shuchter, Emeritus Professor of Clinical Psychiatry, UCSD, reviewed documents related to this matter, including the complaint and allegations, and interviewed respondent for 90 minutes in order to discuss respondent's difficulties and their relationship with the alleged misconduct. Among other things, Dr. Shuchter explains that respondent acknowledged that he has gone through periods of time where his depression compromised his functioning and caused a dereliction of his duties. Dr. Shuchter further explains that respondent's depression has manifested in persistent "low sad mood," diminished interest and pleasure in his life and surroundings, constant physical and mental exhaustion and fatigue, social withdrawal, hypersomnia, and increased appetite with weight gain.

Respondent has felt depleted and paralyzed in simple tasks, worsened by impaired concentration and anxiety. As a result of these problems, respondent withdrew from demands and stressors, including work and clients. Dr. Shuchter notes that the main stressors on respondent in the past two to three years have been the ending of a serious relationship and the increased success of his law practice. In particular, Dr. Shuchter notes that respondent struggled with balancing his ever-expanding business with the rest of his life. Dr. Shuchter provided the State Bar with a statement summarizing his opinion that while respondent's depression has at times compromised his practice, aggressive psychiatric treatment should enable him to live and work with minimal effects while safeguarding his clients.

On October 22, 2018, respondent began seeing a new psychiatrist, Dr. Bruce Hubbard, Voluntary Associate Clinical Professor, UCSD. Dr. Hubbard conducted a full psychiatric evaluation of respondent and diagnosed respondent with Major Depression, Recurrent (F33.1) and Adult Attention Deficit Disorder (F90.0). Dr. Hubbard explained that in the Spring of 2018, respondent was significantly depressed, to the point of being unable to perform in his business as an attorney, with symptoms including isolation, increased daytime sleep, loss of interest in all activities, sadness, difficulty focusing, and anxiety. These symptoms continued to the time of the evaluation. However, Dr. Hubbard has prescribed new medication, expects improvement in respondent's attention deficit disorder over the next two months. Dr. Hubbard believes that respondent has an excellent prognosis and anticipates a return to normal function within two months. Dr. Hubbard provided the State Bar with a statement summarizing his opinion.

As of October 22, 2018, respondent had also begun seeing Lorraine Lawrence, MFT, a therapist who has experience working with attorneys referred to him by the State Bar's referral services. Considering the difficulties respondent faced during the relevant time, as well as the steps he has taken to resolve them, this factor entitles respondent to significant mitigation.

Extraordinary Good Character (Std. 1.6(f)): Respondent produced six declarations from a wide-range of references in the legal and general communities. Each of these references stated that they are aware of the full extent of the misconduct alleged and attested to respondent's good character. Included among these declarations were descriptions of respondent's substantial charitable works, pro bono work, and community service. More specifically, respondent has completed pro bono estate planning sessions for over 30 active duty and retired military members and their families; set up the Patrick Ryan Odgers Memorial Scholarship for Ramona High School Graduates, as well as the Andrew Robert Luke Scholarship for law students; received the 2016 Wiley W. Manuel Award for Pro Bono Legal Services; logged over 900 pro-bono hours completed while in law school and graduated with Pro Bono Honors; represented an asylum seeker through the non-profit Casa Cornelia in San Diego beginning in 2014, and presented at UCSD's seminar series to resident dentists looking to go into private practice. This showing is entitled to significant weight in mitigation.

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; hereinafter "Standards.") 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, Standard 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. (Standard 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Standard 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. (Standards 1.7(b)-(c).)

In addition, respondent has committed multiple acts of professional misconduct in violation of multiple Rules of Professional Conduct and Business and Professions Code sections. Standard 1.7(a) states that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. The most severe sanction applicable to Respondent’s misconduct is to be found in Standard 2.7(b), where the presumed sanction for failure to perform, failure to communicate, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests, is actual suspension.

Nonetheless, after weighing the aggravating circumstances and mitigating circumstances, there is sufficient evidence to deviate below the presumed sanction of Standard 2.7(b), making a stayed suspension appropriate. Under these “extraordinary circumstances,” such a result will serve the purposes of discipline and would not be manifestly unjust.

Further, a review of the analyses utilized by the courts in available case law confirms that actual suspension may not be required in all cases involving similar circumstances. For example, while it is an older case, *Colangelo v. State Bar* (1991) 53 Cal.3d 1255 is post-standards and arguably demonstrates that where mitigation outweighs aggravation in cases involving three client matters and performance, communication, and withdrawal violations, a stayed suspension could be appropriate. (*Colangelo v. State Bar* (1991) [stayed suspension in default proceeding for failure to perform competently, return unearned fees, properly withdraw from representation, and communicate in four client matters; mitigated by no harm and physical difficulties and where hearing judge had “serious misgivings” about three client matters] 53 Cal.3d 1255; see also *Matthew v. State Bar* (1989) 49 Cal. 3d 784 [review department was not convinced that the hearing department’s recommended three-year stayed suspension was sufficient “to ensure ‘the protection of the public, the courts and the legal profession’ and ‘the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession’” (quoting Standards) and thus increased to a 60-day actual suspension for failure to perform competently, communicate, and return unearned fees involving three clients; aggravated by indifference and financial harm, and minimally mitigated by no priors in three years of practice].)

Here, while respondent committed multiple acts of misconduct, he also presented substantial mitigation, as well as evidence that the misconduct was limited in time (less than one year) and is not likely to recur. He also did not engage in acts of dishonesty, has no prior record of misconduct, completed full

restitution, and offered to stipulate to all relevant facts and conclusions of law. These facts are sufficient to distinguish his case from those with similar violations in multiple client matters that resulted in actual suspensions. (See, e.g., *King v. State Bar* (1990) 52 Cal.3d 307 [90-day actual; five-year period of misconduct in two client matters; aggravated by financial and emotional client harm and failure to pay restitution; mitigated by no prior record in 17 years, financial problems, and depression]; *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354 [45-day actual; four-year period of misconduct in three client matters, including commingling; aggravated by prior record of discipline and multiple acts; mitigated by good faith, lack of harm, depression, alcohol problems, candor and cooperation, remorse, and good character]; see also *Bledsoe v. State Bar* (1991) 52 Cal. 3d 1074 [two-year actual; four- to five-year period of misconduct in four client matters; aggravated by indifference (including a default); only mitigation discussed was lack of prior record of discipline in 17 year practice]; *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220 [two-year actual; three- to four-year period of misconduct in four client matters; aggravated by a default, lack of restitution, client harm, and multiple acts; no mitigation]; *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73 [one-year actual; three-year period of misconduct in three client matters, including an act of moral turpitude; aggravated by multiple acts, client harm, indifference, and lack of candor and cooperation; no mitigation presented due to default].)

Consequently, on balance, the substantial mitigating circumstances significantly outweigh the relatively limited aggravating circumstances. Thus, despite the presumption of Standard 2.7(b), a one-year stayed suspension, with probation conditions including psychotherapy, is appropriate to address the alleged misconduct and to ensure it does not recur. This level of discipline therefore serves to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

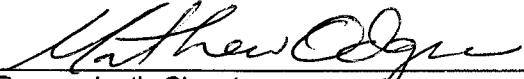
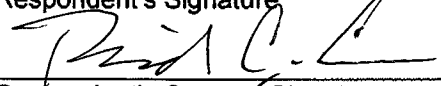
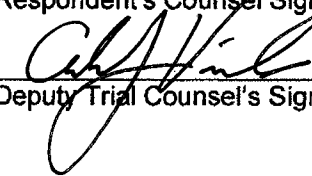
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of October 26, 2018, the discipline costs in this matter are \$3,857. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: MATTHEW WILLIAM ODGERS	Case Number(s): 18-O-11318; 18-O-11661; 18-O-12360
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SIGNATURE OF THE PARTIES

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

<u>11/28/2018</u> Date	 Respondent's Signature	<u>Matthew W. Odgers</u> Print Name
<u>11/20/2018</u> Date	 Respondent's Counsel Signature	<u>David C. Carr</u> Print Name
<u>11/26/2018</u> Date	 Deputy Trial Counsel's Signature	<u>Andrew J. Vasicek</u> Print Name

(Do not write above this line.)

In the Matter of: MATTHEW WILLIAM ODGERS	Case Number(s): 18-O-11318; 18-O-11661; 18-O-12360
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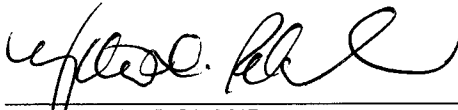
STAYED SUSPENSION ORDER

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

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

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).)

December 11, 2018
Date



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 11, 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:

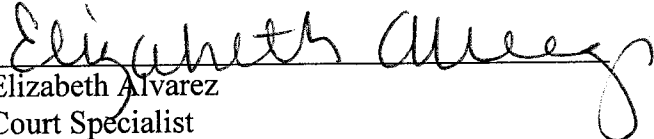
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. CARR
LAW OFFICE OF DAVID C. CARR
600 W BROADWAY
STE 700
SAN DIEGO, CA 92101 - 3370

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

Andrew J. Vasicek, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 11, 2018.


Elizabeth Alvarez
Court Specialist
State Bar Court