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State Bar Court of California Hearing Department San Francisco PROBATION VIOLATION		
Counsel for the State Bar Terrie Goldade Supervising Attorney, Office of Probation 845 S. Figueroa St. Los Angeles, CA 90017 Bar # 155348	Case Number(s): 18-PM-18139-MC	For Court use only PUBLIC MATTER FILED  JUN 07 2019 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Timothy Elwood Gomes 15 Boardman Pl Ste 200 San Francisco, CA 94103-4724 Bar # 168140	Submitted to: Settlement Judge	
In the Matter of: Timothy Elwood Gomes Bar # 168140 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PROBATION VIOLATION—"PM" PROCEEDING <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 14, 1993**.
- (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 **14** 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."

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

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

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

- (1) **Prior record of discipline:**
- (a) State Bar Court case # of prior case: **16-O-14329, 16-O-14408 (S246283)**
 - (b) Date prior discipline effective: **April 13, 2018**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **rules 3-700(D)(2) (2 counts) and 4-100(B)(3)**
 - (d) Degree of prior discipline: **one year stayed, two years probation**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

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- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) **Lack of Candor/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. **Respondent failed to file timely, compliant quarterly reports and failed to pay restitution.**
- (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.
- (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: See attachment.

D. Recommended Discipline (choose only one):

- (1) **Probation Extended:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is extended for with the following conditions set forth in section E.
- (2) **Probation Revoked; Probation Reinstated; Actual Suspension:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and 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 the first of the period of Respondent's probation.
- (3) **Probation Revoked; Probation Reinstated; No Actual Suspension:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and 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 set forth in section E.
- (4) **Probation Revoked; Probation Not Reinstated; Actual Suspension:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and Respondent is actually suspended from the practice of law for .
- (5) **Probation Revoked; Probation Reinstated; Actual Suspension "And Until" Rehabilitation:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and 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).)

(6) **Probation Revoked; Probation Reinstated; Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and 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).)

(7) **Probation Revoked; Probation Reinstated; Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:** Respondent's probation imposed in Supreme Court matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

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

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

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

(8) **Probation Revoked; Probation Reinstated; Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:** Respondent's probation imposed in Supreme Court

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matter (State Bar Court case No.) is revoked, the stay of the previously stayed suspension is lifted, and 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).)

(9) **Probation Revoked; Probation Reinstated; Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:** Respondent's probation imposed in Supreme Court matter **S246283** (State Bar Court case No. **16-O-14329, 16-O-14408**) is revoked, the stay of the previously stayed suspension is lifted, and 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 **two years** with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first **30 days** of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
 - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>
Shakur Ahmad Shabazz	\$2095	September 21, 2016
Charles Nordlinger	\$8500	May 26, 2017

- 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).)

E. In addition to any probation conditions set forth in section D. of this stipulation, the following probation conditions are also recommended:

- (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 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) **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).)
- (2) **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,

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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. (*Atheam 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).)

- (3) **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
- (4) **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

Attachment language (if any):

Respondent admits that the following facts are true and that he is culpable of the specified violations.

1. On November 21, 2017, the State Bar Court filed and served upon Respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Stayed Suspension; No Actual Suspension in State Bar Court Case Nos. 16-O-14329 and 16-O-14408 ("Order Approving Stipulation").

2. On March 14, 2018, the California Supreme Court filed and transmitted Order No. S246283 (State Bar Court Case Nos. 16-O-14329 and 16-O-14408) which ordered that Respondent be suspended from the practice of law for a period of one year, that execution of suspension be stayed and that Respondent be placed on probation for a period of two years, and that he be subject to the conditions of probation as recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on November 21, 2017.

3. Respondent was ordered to comply with certain conditions of probation, but failed to do so as set forth below:

- Respondent was ordered to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to the Office of Probation each January 10, April 10, July 10, and October 10 ("quarterly reports"). Respondent filed a late, non-compliant report on July 11, 2018, and filed a non-compliant report on October 9, 2018. Respondent filed late, but otherwise compliant, reports for July 10 and October 10, 2018 and for January 10, 2019 on January 22, 2019.

- Respondent was ordered to pay restitution, as follows:

- o to Shakur Ahmad Shabazz in the principal amount of \$2095 (plus interest of 10% per annum accruing from September 21, 2016). If the Client Security Fund ("CSF") has reimbursed a payee for all or any portion, Respondent must also pay restitution to CSF in the amount paid, plus applicable interest and costs. Respondent was ordered to make a minimum payment of \$500 each month and to provide satisfactory proof of payment to the Office of Probation with each quarterly probation report. If Respondent failed to pay any installment, the remaining balance is due and payable immediately.

- o to Charles Nordlinger in the principal amount of \$8500 (plus interest of 10% per annum accruing from May 26, 2017). If the Client Security Fund ("CSF") has reimbursed a payee for all or any portion, Respondent must also pay restitution to CSF in the amount paid, plus applicable interest and costs. Respondent was ordered to make a minimum payment of \$500 each month and to provide satisfactory proof of payment to the Office of Probation with each quarterly probation report. If Respondent failed to pay any installment, the remaining balance is due and payable immediately.

Respondent did not provide satisfactory proof of any payment.

4. On December 7, 2018, the Office of Probation filed a motion to revoke Respondent's probation.

5. On January 2, 2019, Respondent served his response to the motion to revoke probation and began providing the Office of Probation with additional documentation including as set forth above.

Legal Conclusion: By failing to comply with probation conditions, as set forth above, Respondent willfully violated Business and Professions Code, section 6068(k).

OTHER CIRCUMSTANCES WHICH WERE CONSIDERED IN THE RESOLUTION OF THIS MATTER.

Respondent's original discipline was in relation to two client matters in which he failed to promptly refund unearned fees; in one of those client matters, Respondent also failed to render an appropriate accounting to the client. That matter became effective April 13, 2018. Respondent was homeless from April through October 2018 and has struggled financially since the State Bar disciplinary matter. Additionally, his children were removed from his family

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and placed with other family members during the State Bar litigation. Respondent understands these circumstances do not excuse his misconduct, but asserts they assist in explaining the misconduct.

Since this stipulation was first negotiated, Respondent has now provided proof of completion of State Bar Ethics School on April 15, 2019, which was 2 days late. Respondent has not yet provided proof of passage of the MPRE by his deadline of April 13, 2019, though he asserts he took the MPRE on March 23, 2019 and is awaiting the release of results which is currently scheduled for April 18, 2019. Respondent has also provided proof of completion of Client Trust Accounting School on April 15, 2019.

Respondent has been cooperative with the Office of Probation in settling this matter; he admits that he failed to comply with his probation conditions. Respondent now understands that he needs to comply with each condition on a timely basis. Respondent also now understands that, even if he experiences other problems, including family and financial, he must (1) successfully serve and file a motion for modification at his earliest opportunity if he will be unable to timely complete his conditions, and (2) continue to comply with his conditions until an order is filed modifying his conditions.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 15, 2019.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.14 states that actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member's unwillingness or inability to comply with disciplinary orders. Standard 1.8 (a) states that if a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

An attorney who violated his probation by failing to timely complete restitution and by failing to timely attend Ethics School, received two years' probation with a condition that he was to be actually suspended for the first 30 days. In the Matter of Gorman (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567. Neither bad purpose nor intentional evil is required to establish willful violations of disciplinary probation. Id. at 572. An attorney's cooperation in stipulating to facts warrants some mitigative consideration. Id. More serious sanctions are assigned to probation violations closely related to reasons for imposition of previous discipline or to rehabilitation. Id. at 573-574. Restitution is closely related to Respondent's previous discipline and will assist in Respondent's rehabilitation.

An attorney who violated his probation by failing to timely complete restitution and file quarterly reports, received 90 days actual suspension and ordered to remain suspended until he furnished satisfactory proof of full satisfaction of restitution. In the Matter of Laden (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678. The attorney's level of discipline was, in part, "to bring to a conclusion this 10-year saga with the State Bar." Id. at 687. Respondent in the pending matter has not been engaged in a decade long "saga" with the State Bar on this matter; however, he has 2 payees to whom he owes restitution.

The probation conditions violated were related to his original misconduct, important for his rehabilitation, and were intended to assist the State Bar in monitoring Respondent's rehabilitation. However, in light of Respondent's circumstances (set forth above), it is agreed that the degree of discipline set forth in this stipulation is appropriate in relation to standard 2.14 based upon Respondent's stipulation to his violations, his agreement to remain suspended until he provides satisfactory proof of all restitution, and his agreement to reinstate his probation in order to demonstrate his ability and willingness to prove his rehabilitation.

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COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Probation has informed respondent that as of April 15, 2019, the prosecution costs in this matter are \$2,585. 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.

WAIVER OF ANY VARIANCES

The parties stipulate to waive any variance in the language, allegations, and conclusions of law between this stipulation and the Notice of Motion and Motion to Revoke Probation filed on December 7, 2018. Respondent acknowledges that this stipulation contains language, allegations, and a conclusion of law which may differ from the language, allegations, and conclusion of law contained in the Notice of Motion and Motion to Revoke Probation filed on December 7, 2018. The parties further stipulate to waive the right to have any amendment to the Notice of Motion and Motion to Revoke Probation.

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(Do not write above this line.)

In the Matter of: Timothy Elwood Gomes	Case Number(s): 18-PM-18139-MC
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PROBATION VIOLATION 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.

On page 10 of the Stipulation, at paragraph F.(2), line 2, the following sentence is added after the sentence which ends with the word "suspension": "In addition, Respondent must comply with the probation condition on page 9 of the Stipulation at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations."

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).)

June 6, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
Judge of the State Bar Court

SUPREME COURT
FILED

(State Bar Court Nos. 16-O-14329 (16-O-14408))

MAR 14 2018

Jorge Navarrete Clerk

S246283

IN THE SUPREME COURT OF CALIFORNIA ^{Deputy}

En Banc

In re TIMOTHY ELWOOD GOMES on Discipline

The court orders that Timothy Elwood Gomes, State Bar Number 168140, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Timothy Elwood Gomes must comply with the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on November 21, 2017; and
2. At the expiration of the period of probation, if Timothy Elwood Gomes has complied with the terms of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Timothy Elwood Gomes must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and 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).)

Costs are 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.

Jorge Navarrete, Clerk of the Supreme Court
of the State of California, do hereby certify that the
preceding is a true copy of an order of this Court as
shown by the records of my office.

Witness my hand and the seal of the Court this

14 day of March 2018

By: _____

Deputy

kwiktag® 237 301 637



CANTIL-SAKAUYE

Chief Justice

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco STAYED SUSPENSION		
Counsel For The State Bar Erica L. M. Dennings Senior Trial Counsel 180 Howard Street, 7th Fl. San Francisco, CA 94105 (415) 538-2285 Bar # 145755	Case Number(s): 16-O-14329, 16-O-14408	For Court use only PUBLIC MATTER FILED <i>ef</i> NOV 21 2017 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent James K. O'Gallagher 225 W. Winton Avenue, Suite 120 Hayward, CA 94544 (510) 264-0500 Bar # 97088		
In the Matter of: TIMOTHY ELWOOD GOMES Bar # 168140 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 14, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)

Stayed Suspension



413

(Do not write above this line.)

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

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

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

(Do not write above this line.)

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

Additional aggravating circumstances

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

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

(Do not write above this line.)

- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances

No prior discipline: See attachment to stipulation at p. 10.
Pre Trial Stipulation: See attachment to stipulation at p. 10.

D. Discipline:

- i.1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one (1) year.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- in. and until Respondent does the following:

The above-referenced suspension is stayed.

- in.) **Probation:**

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(Do not write above this line.)

- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

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

F. Other Conditions Negotiated by the Parties:

- (1) (7) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason: _____

- (2) **Other Conditions:**

(Do not write above this line.)

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";
 - b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
 - c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

Case No. 16-O-14408 (Complainant: Charles Nordlinger)

FACTS:

7. On March 24, 2016 Charles Nordlinger ("Nordlinger") hired respondent to represent him in a criminal case. Nordlinger paid respondent advanced fees of \$15,000 total; \$10,000 on March 25, 2016 and \$5,000 on April 8, 2016. After appearing in court on April 8, 2016, respondent performed no other work on Nordlinger's behalf. On April 12, 2016, Nordlinger retained new counsel, Jamie Harris.

8. On April 18, 2016 Nordlinger sent respondent an email terminating him as of April 12, 2016 and notifying him that he hired Harris. Also on April 18, 2016, Nordlinger called respondent to notify him that he retained new counsel and asked for a refund of unearned fees. Respondent did not refund any unearned fees to Nordlinger.

9. On May 22, 2017, the parties entered into a Settlement and Release Agreement and Agreement for Stipulated Judgment whereby respondent agreed to refund \$10,000 to Nordlinger. Respondent agreed to make an initial payment of \$1000 by May 22, 2017 and subsequent payments of \$500 per month. The agreement also provided that a judgment shall enter against respondent if he failed to pay any of the monthly payments.

10. Respondent paid Nordlinger \$1000 on May 26, 2017 and \$500 in August 2017. Respondent has failed to pay any of the remaining \$8500 due.

CONCLUSIONS OF LAW:

11. By not promptly refunding any part of the \$10,000 that was unearned including failing to pay the amount agreed upon on May 22, 2017, respondent failed to promptly refund unearned fees in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent failed to provide an accounting in one matter and failed to return unearned fees in two separate client matters.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances

No Prior Discipline (Std. 1.6(a)): Respondent was admitted to the practice of law in California on December 14, 1993 and has no prior record of discipline. Respondent is entitled to significant mitigation for having practiced law for 22 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for

entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent admits to committing three acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

Stds. 2.2. (b) and 2.7(c) apply to this case. Std. 2.2 (b) relates to failing to provide an accounting and Std 2.7 (c) relates to failure to refund unearned fees. Both Std 2.2 (b) and 2.7 (c) require suspension or reproval.

Bach v. State Bar (1991) 52 Cal.3d 1201 provides guidance on the appropriate level of discipline. The attorney in *Bach* was actually suspended for 30 days for failure to perform, failure to communicate, improper withdrawal, failure to refund unearned fees, and failure to cooperate in the State Bar investigation in one client matter. The only mitigating factor was no prior record of discipline. There were several factors in aggravation: lack of insight into wrongdoing, failure to accept responsibility for his misconduct, and harm to the client.

In this case, respondent did not misappropriate funds or fail to competently perform, but failed to return unearned fees and provide an accounting.

Respondent's misconduct is less egregious than that of the attorney in *Bach*. Respondent is entitled to significant mitigation for his 22 years in practice with no prior record of discipline and it appears the misconduct is was limited in scope and time because he failed to provide an accounting and failed to return unearned fees in 2 client matters in 2016. Discipline at the low end of the standard is appropriate to have respondent recognize his wrongdoing but also to give respondent a chance to rehabilitate from his misconduct by paying restitution. Based on the standards, the case law, and the purposes of attorney discipline, a one year stayed suspension, with two years' probation with standard conditions of probation as well as financial conditions requiring that respondent make restitution to Nordlinger in the amount of \$8,500 plus interest and Shabazz in the amount of \$2095 plus interest is appropriate.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of November 13, 2017, the discipline costs in this matter are \$7793.

Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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

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

(Do not write above this line.)

In the Matter of: TIMOTHY ELWOOD GOMES	Case number(s): 16-O-14329, 16-O-14408
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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>11/17/17</u> Date	<u><i>Timothy E. Gomes</i></u> Respondent's Signature	<u>Timothy Elwood Gomes</u> Print Name
<u>11/18/17</u> Date	<u><i>James K. O'Gallagher</i></u> Respondent's Counsel Signature	<u>James K. O'Gallagher</u> Print Name
<u>17 November 2017</u> Date	<u><i>Erica L. M. Dennings</i></u> Deputy Trial Counsel's Signature	<u>Erica L. M. Dennings</u> Print Name

(Do not write above this line.)

In the Matter of: TIMOTHY ELWOOD GOMES	Case Number(s): 16-O-14329; 16-O-14408
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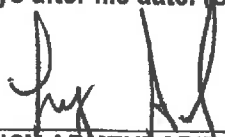
STAYED SUSPENSION ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
 - The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
 - All Hearing dates are vacated.
1. On page 5 of the stipulation, paragraph F.(1), "(7)" is deleted, and in its place a box with an "X" inside it is inserted;
 2. On page 9 of the stipulation, in paragraph #1, "Between November 28, 2015 and January 6, 2015" is deleted, and in its place is inserted "Between November 28, 2015 and January 6, 2016";
 3. On page 10 of the stipulation, in paragraph #9, "if he failed to may any of the monthly payments" is deleted, and in its place is inserted "if he failed to make any of the monthly payments"; and
 4. On page 12, in the first paragraph, "and it appears the misconduct is was limited in scope" is deleted, and in its place is inserted "and it appears the misconduct was limited in scope".

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

Nov. 21, 2017
Date


LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 21, 2017, I deposited a true copy of the following document(s):

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

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

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

JAMES KIERAN O'GALLAGHER
225 W WINTON AVE #120
HAYWARD, CA 94544

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Erica L. M. Dennings, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 21, 2017.

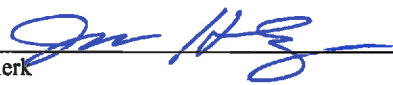


George Hue
Case Administrator
State Bar Court



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

ATTEST April 12, 2019
State Bar Court, State Bar of California,
Los Angeles

By 
Clerk

DECLARATION OF SERVICE BY REGULAR MAIL

CASE NUMBER(s): 18-PM-18139-MC

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 845 S. Figueroa Street, Los Angeles, California 90017-2515, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

PROBATION VIOLATION "PM" PROCEEDING

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

By United States Mail	
N/A	

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

N/A

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

DATED: May 8, 2019

SIGNED: 

Mia Hibler
Declarant

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 7, 2019, I deposited a true copy of the following document(s):

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

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

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

TIMOTHY E. GOMES
LAW OFFICE OF TIM GOMES
15 BOARDMAN PL STE 200
SAN FRANCISCO, CA 94103 - 4724

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Terrie Goldade, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 7, 2019.


George Hue
Court Specialist
State Bar Court