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

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| <p>Counsel for the State Bar</p> <p>Lori Flowers Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90047 (213) 765-1267</p> <p>Bar # 242099</p> | <p>Case Number(s): SBC-19-0-30183</p> <p>kwiktag® 241 073 087</p>  <p>[OCTC CASE NUMBERS: 18-0-10634 18-0-11093]</p> | <p>For Court use only</p> <p align="center">PUBLIC MATTER</p> <p align="center">FILED</p> <p align="center">MAY 21 2019 <i>MZ</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> |
| <p>Counsel For Respondent</p> <p>Arthur Margolis Margolis & Margolis 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996</p> <p>Bar # 57703</p> | <p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> | |
| <p>In the Matter of: FARIBA BAKSHIAN BANAYAN</p> <p>Bar # 166496</p> <p>A Member of the State Bar of California (Respondent)</p> | | |

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 9, 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 **16** 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."

item 4-10-19

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - 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.

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- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page**
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. **See page 12**
- (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. **See pages 11-12**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-filing Stipulation, see page 11
No Prior Record of Discipline, see page 11
Emotional Difficulties, see page 11
Community/Civic Involvement, see page 12

D. Recommended Discipline:

Stayed Suspension:

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

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to

be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

- (4) **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**
- a. Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory

evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because _____.
- (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).

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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.

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

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: FARIBA BAKSHIAN BANAYAN
CASE NUMBERS: 18-O-10634, 18-O-11093

FACTS AND CONCLUSIONS OF LAW.

Respondent pleads nolo contendere to the following facts and violations. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the stipulated facts and of her culpability of the statutes and/or Rules of Professional Conduct specified herein.

Case No. 18-O-10634 (Complainants: E. Martinez, G. Maldonado)

FACTS:

1. On June 12, 2015, E. Martinez and G. Maldonado met with respondent to discuss adjusting their immigration status. Respondent advised them that they could adjust their status by filing I-130 relative petitions through each of their adult daughters, K. Barcenas and B. Maldonado, who are U.S. citizens.
2. On June 16, 2015, Ms. Martinez and Mr. Maldonado met with respondent, signed respondent's fee agreement, and each of them paid respondent's \$2200 attorney fee. During this meeting, respondent obtained preliminary information from the parties and prepared initial drafts of the I-130 petitions ("petitions").
3. On September 17, 2015, Ms. Maldonado signed the petition on behalf of her father, Mr. Maldonado, who then paid \$620 in cash, representing a portion of the petition costs.
4. Respondent received the \$620 cost payment and placed it in the client file. She did not deposit the \$620 into her client trust account.
5. On September 24, 2015, Ms. Barcenas signed the petition on behalf of her mother, Ms. Martinez, who then paid the remaining \$595 in petition costs in cash.
6. Respondent received the \$595 and placed it into the client file. She did not deposit the \$595 into her client trust account.
7. Respondent did not file the petitions and the petition forms expired on December 31, 2015.
8. Between October 2015 and February 2017, Ms. Martinez and Mr. Maldonado called respondent and left messages inquiring about the status of their cases on an almost monthly basis. Respondent received the messages but did not return their calls.

9. In February of 2017, Ms. Martinez and Mr. Maldonado consulted an immigration attorney at their church because they had not heard from respondent. The attorney informed them that no Alien Registration Number ("A-number"), a unique eight or nine digit number assigned to a non-citizen which signals that a case has been opened on their behalf, had been assigned to either case. The attorney also informed them that they were not qualified for residency because certain forms should have been filed in 2001 by their daughters.

10. On February 28, 2017, Ms. Martinez, Mr. Maldonado and Ms. Barcenas met with respondent and Ms. Barcenas signed a newly prepared I-130 petition form on behalf of her mother. Respondent, however, did not file the newly executed petition.

11. Since Ms. Maldonado was not present at the February 28, 2017 meeting, respondent promised the parties that she would email Ms. Maldonado a new petition to sign. Respondent, however, did not email a new petition to Ms. Maldonado.

12. On July 22, 2017, Ms. Martinez sent respondent a text message in which she requested a refund since neither she nor Mr. Maldonado had received any immigration paperwork. Respondent received the text message but did not reply.

13. On August 14, 2017, Ms. Martinez sent respondent a text message that was identical to the message sent on July 22, 2107. Respondent received the text message but did not reply.

14. Mr. Maldonado also called respondent on November 8, 9, 16, 17, and 24, 2017 and again on December 7, 2017 to determine the status of the case and left messages. Respondent received the calls but did not return his calls.

15. On January 4, 2018, Ms. Martinez and Mr. Maldonado filed a State Bar complaint.

16. On March 5, 2018, respondent met with Ms. Martinez and Mr. Maldonado, and during that meeting Ms. Martinez again asked respondent for a refund. On that date, respondent refunded the entire amount of fees and costs paid by Mr. Martinez and Ms. Maldonado to them.

CONCLUSIONS OF LAW:

17. By failing to file the I-130 relative petitions on behalf of her clients, Ms. Martinez and Mr. Maldonado, respondent intentionally failed to perform legal services with competence in willful violation of former Rules of Professional Conduct, rule 3-110(A).

18. By failing to deposit the \$1,215 respondent received from her clients as filing costs for the I-130 relative petitions into her client trust account, respondent willfully violated former Rules of Professional Conduct, rule 4-100(A).

19. By failing to respond to numerous reasonable telephonic status inquiries that respondent received from her clients between October 2015 and February 2017, and between November 2017 and December 2017, respondent willfully violated Business and Professions Code, section 6068(m).

20. By failing to promptly refund to Ms. Martinez and Mr. Maldonado any part of the \$4,400 received as advanced legal fees that were unearned at the time of Ms. Martinez's request on July 22, 2017 and again on August 14, 2017, respondent willfully violated former Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 18-O-11093 (Complainant: A. Maldonado)

FACTS:

21. On May 27, 2015, A. Maldonado met with respondent to discuss the immigration status of her parents who resided in Mexico and wished to adjust their status in order to become U.S. citizens. Respondent advised Ms. Maldonado that her parents could adjust their status by having Ms. Maldonado file I-130 relative petitions on their behalf as she was already a U.S. citizen. During this meeting, Ms. Maldonado paid a portion of respondent's attorney fees and provided respondent with preliminary information and respondent prepared the initial petition drafts.

22. On November 16, 2015, Ms. Maldonado met with respondent and signed the completed petitions. Ms. Maldonado paid the remainder of respondent's legal fees along with an additional \$3,815 for the petition costs in cash.

23. Respondent received the \$3,815 and placed it into the client file. She did not deposit the \$3,815 into her client trust account.

24. Respondent did not file the petitions and the petition forms expired on December 31, 2015.

25. Respondent determined that Ms. Maldonado did not financially qualify to support both of her parents as required for the relative petition process and met with Ms. Maldonado on July 26, 2017, to discuss joint sponsorship and the documents required for an affidavit of support. During the meeting, Ms. Maldonado provided respondent with information for her brother-in-law as a potential sponsor and respondent agreed to contact him directly. Respondent, however, did not contact Ms. Maldonado's brother-in-law.

26. On January 15, 2018, Ms. Maldonado sent respondent an email asking for the A-numbers assigned to her parents' cases. Respondent did not receive the email as her inbox was full and the email was returned as undelivered.

27. On January 22, 2018, Ms. Maldonado filed a State Bar complaint.

28. On March 24, 2018, Ms. Maldonado met with respondent and informed her that her parents had changed their minds and requested a refund of all fees paid. On that date, respondent refunded the entire amount of fees and costs paid by Ms. Maldonado to her.

CONCLUSIONS OF LAW:

29. By failing to file the I-130 relative petitions for her client, A. Maldonado, on behalf of Ms. Maldonado's parents, respondent intentionally failed to perform legal services with competence in willful violation of former Rules of Professional Conduct, rule 3-110(A).

30. By failing to deposit the \$3,815 respondent received from Ms. Maldonado as filing costs for the I-130 relative petitions into her client trust account, respondent willfully violated former Rules of Professional Conduct, rule 4-100(A).

AGGRAVATING CIRCUMSTANCES

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent engaged in six acts of misconduct over two client matters.

MITIGATING CIRCUMSTANCES

Pre-filing 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].)

No Prior Record of Discipline: Although respondent's misconduct is serious, she is entitled to mitigation for almost 22 years of discipline free practice prior to the misconduct herein. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [attorney's many years in practice with no prior discipline was considered mitigating evidence even when the misconduct at issue was serious]; *Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [ten years of discipline free practice entitled to significant mitigation]; *Friedman v. State Bar* (1990), 50 Cal. 3d 235, 245 [20 years is "highly significant" mitigation])

Emotional Difficulties: At the time of the misconduct committed herein, respondent was the victim of domestic abuse from her husband. During this period, her husband also became ill and died; she was his caretaker prior to his death. After her husband's death, respondent suffered further distress in trying to save her house from foreclosure and endured continued emotional abuse from both respondent's immediate family and her in-laws who viewed her participation in domestic violence counseling as shameful and blamed respondent for her husband's illness and death. Respondent's experiences resulted in emotional and physical distress and negatively impacted her ability to manage her practice and attend to client matters. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [attorney's lay testimony of his emotional problems was considered in mitigation.])

Good Character (Std. 1.6(f)): Respondent's good character has been attested to by nine individuals, who are aware of respondent's misconduct, still hold her in high regard, and commend her integrity, skill, dedication, and compassion for her clients and to the various communities in which she lives and volunteers her time.

attorney who has personally and professionally known respondent for over thirty years, further lauds respondent as honest, loyal, ethical, generous, and conscientious in all aspects of her life.

The remaining six letters are from friends and colleagues— a CPA, a preschool director, a real estate principal, a New York Times best-selling author and journalist, a teacher and business owner, and an interior designer – who have known respondent over time periods ranging from three to thirty years and similarly attest to respondent’s compassion, competence, integrity, and reliability. Respondent’s character letters are representative of a varied range of members of the general and legal communities who are aware of respondent’s misconduct in the present matter.

Community/Civic Involvement: Respondent was an active member of the El Rodeo School PTA. In that capacity, she was involved in the Science Olympiad and was instrumental in planning many of the PTA fundraisers. Letters from two individuals who worked directly with respondent during her time in the PTA note that respondent’s dedication to the students and the teachers along with her numerous volunteer hours, made respondent’s involvement critical to the success of El Rodeo’s yearly events. Respondent presently serves as secretary on the board of Professional Women’s Toastmasters (a chapter of International Toast Masters), a non-profit organization that empowers individuals to develop communication and leadership skills, resulting in greater self-confidence and personal growth. Additionally, respondent is on the board for the Southwestern Law School Alumni Association and is helping to organize an American Inns of Court chapter on campus. The Associate Dean for Institutional Advancement further lauds respondent’s generosity and long history of volunteer service to Southwestern Law School following her graduation in 1991. Respondent has also hosted numerous Inn of St. Ives dinners, providing an opportunity for Southwestern students to interact with alumni attorneys and judges and is a member of the Southwestern Deans Circle which recognizes distinguished giving. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [commitment to community service and civic activities “is a mitigating factor that is entitled to considerable weight”.])

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

In this matter, respondent is culpable of committing six separate acts of professional misconduct. Standard 1.7(a) requires that the most severe sanction be imposed when a member has committed two or more acts of misconduct for which different sanctions are specified by the Standards.

The most severe standards applicable to respondent's misconduct are Standards 2.2 (b) and 2.7(c). Standard 2.2 (b), which relates to respondent's violation of former Rules of Professional Responsibility, rule 4-100(A), provides that suspension or reproof is the presumed sanction. Standard 2.7(c) applies to respondent's violations of former Rules of Professional Responsibility, rule 3-110 (A) and Business and Professions Code, section 6068 (m). Standard 2.7(c) provides that suspension or reproof is the presumed sanction for performance, communication or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client.

Here, the extent of the misconduct is serious and relates directly to the practice of law because respondent failed to file I-130 relative petitions on behalf of her clients who were seeking to change their immigration status and respond to their multiple attempts to contact her about the status of their cases. Respondent also failed to deposit the petition costs she received for filing the petitions into her client trust account and promptly refund fees and costs to one of her clients who repeatedly asked for a refund after not receiving any documents or being able to contact respondent for almost five months. In addition, respondent caused harm by depriving her clients of their funds for over two years when she failed to perform any of the services for which she was hired.

While respondent's misconduct is mitigated by over 22 years of practice without a prior imposition of discipline, entering into a pre-filing stipulation, evidence of good character, extreme emotional distress, and community/civic involvement, it is also aggravated by multiple acts of misconduct in two matters and harm to her clients. However, respondent's conduct was aberrational and primarily attributable to the circumstances which resulted in her emotional and physical distress. On balance, the mitigation outweighs the aggravation in this matter. Accordingly, a one-year stayed suspension, with a one-year probation period on the terms and conditions set forth herein, is the appropriate level of discipline.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Department 2007), the attorney was disciplined for failing to perform competently in a death penalty appeal by not filing an opening appellate brief despite receiving several extensions, failing to obey court orders directing that the brief be filed, and failing to report judicial sanctions imposed from his failure to obey court orders. Although the court determined that respondent's conduct harmed the administration of justice, it found no evidence of client harm. The court also concluded that respondent's seventeen years of discipline-free practice, good character, and cooperation with the State Bar outweighed the aggravating factors. Respondent received discipline consisting of a six month stayed suspension and one-year probation.

Similar to *Riordan*, respondent failed to perform by not filing documents that were essential to the advancement of her client matters. Respondent, also like *Riordan*, has a long history of discipline free practice and is entitled to other significant mitigation, such as cooperation and evidence of good character. In contrast, whereas *Riordan* only involved a single client matter with no harm, respondent's multiple acts of misconduct span two client matters, involve client trust account violations, and have resulted in harm to her clients. Therefore, a lengthier period of stayed suspension than that imposed in *Riordan* is warranted in the present matter.

On balance, and in light of the aggravating and mitigating factors, a one-year stayed suspension with one-year probation on the terms and conditions set forth herein, is consistent with case law and accomplishes the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 26, 2019, the discipline costs in this matter are approximately \$3,300. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

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| In the Matter of: FARIBA BAKSHIAN BANAYAN | Case Number(s): 18-O-10634 18-O-11093 |
|---|---|

Nolo Contendere Plea Stipulations to Facts, Conclusions of Law, and Disposition

The terms of pleading nolo contendere are set forth in the Business and Professions Code and the Rules of Procedure of the State Bar. The applicable provisions are set forth below:

Business and Professions Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere will be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court will find the member culpable. The legal effect of such a plea will be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based.

Rules of Procedure of the State Bar, rule 5.56. Stipulations to Facts, Conclusions of Law, and Disposition

“(A) Contents. A proposed stipulation to facts, conclusions of law, and disposition must comprise:

[] . . . []

(5) a statement that the member either:

- (a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
- (b) pleads nolo contendere to those facts and misconduct;

[] . . . []

(B) Plea of Nolo Contendere. If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.”

I, the Respondent in this matter, have read the applicable provisions of Business and Professions Code section 6085.5 and rule 5.56 of the Rules of Procedure of the State Bar. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea will be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

4/11/2019
Date

Respondent's Signature

Fariba Bakshian Banayan
Print Name


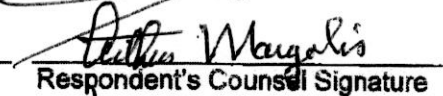
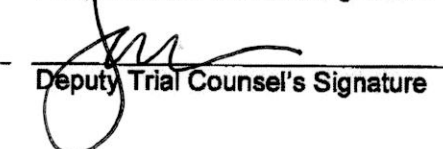
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In the Matter of:
FARIBA BAKSHIAN BANAYAN

Case Number(s):
18-O-10634
18-O-11093

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>4/11/2019</u> Date |  Respondent's Signature | <u>Fariba Bakshian Banayan</u> Print Name |
| <u>4/22/19</u> Date |  Respondent's Counsel Signature | <u>Arthur Margolis</u> Print Name |
| <u>4/23/19</u> Date |  Deputy Trial Counsel's Signature | <u>Lori Flowers</u> Print Name |

(Do not write above this line.)

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| In the Matter of: FARIBA BAKSHIAN BANAYAN | Case Number(s): SBC-19-O-30183 |
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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 3 of the Stipulation, at paragraph B.(11), "11" is inserted after "page".
2. On page 3 of the Stipulation, under "Additional aggravating circumstances," the following language is added: "Harm to clients – see page 13 (fifth paragraph) and page 14 (first paragraph) of the Stipulation."

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).)**

May 21, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
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 May 22, 2019, I deposited a true copy of the following document(s):

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

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

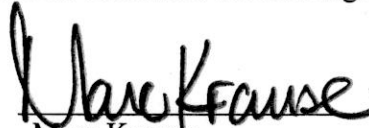
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

LORI FLOWERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 22, 2019.



Marc Krause
Court Specialist
State Bar Court