

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT BROOKE A. SCHAFER, No. 194824 1149 South Hill Street, 9th Flr Los Angeles, CA 90015 Telephone: (213) 765-1000</p>	<p>Case number(s) 02-0-12805 02-0-11346 02-0-13430 02-0-15143 02-0-13411</p> <p>kwiktag® 031 975 024 </p>	<p>(for Court's use) PUBLIC MATTER FILED JUL 30 2003 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent David A. Clare 12791 Western Ave., Suite J Garden Grove, CA 92841</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of Timothy L. McCandless</p> <p>Bar # 147715 A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted July 30, 1990
 (date)
- (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 and order consist of 17 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
 2004, 2005
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).] Facts supporting aggravating circumstances are required.

(1) Prior record of discipline [see standard 1.2(f)]

(a) State Bar Court case # of prior case 96-0-07376 et al (so 90010)

(b) date prior discipline effective October 22, 2000

(c) Rules of Professional Conduct/ State Bar Act violations: RPC 3-110 (A) (two counts);

4-200; Business and Professions Code 6103 (two counts)

(d) degree of prior discipline 60 days actual suspension; 24 months stayed

(e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".
See attachment

(2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) 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.

(4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e).] 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 deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's 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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

D. Disciplina

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of thirty-six (36) months.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of sixty (60) months, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of six (6) months

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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 shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) Other conditions negotiated by the parties:
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of Timothy L. McCandless

Case Number(s):

02-0-12805 et al.

A Member of the State Bar

Law Office Management Conditions

- a. Within 90 days/ ~~XXXXXX~~ months/ ~~XXXXXX~~ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ~~XXXXXX~~ days/ 12 months ~~XXXXXX~~ years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 12 hours of MCLE approved courses in law office management, ~~attorney-client relations and or general legal ethics~~. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for _____ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TIMOTHY L. McCANDLESS

CASE NUMBERS: 02-O-12805, 02-O-11346, 02-O-13430, 02-O-15143
and 02-O-13411

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct and sections of the Business and Professions Code:

Case no. 02-O-12805

1. On March 27, 2000, Salomon Cruz employed Respondent to represent him in a personal injury claim arising from an automobile accident with an uninsured motorist occurring two weeks earlier (the "personal injury case"). Cruz retained Respondent through an organization called Centro Legal Hispano ("Centro Legal"). Respondent had office space at Centro Legal and at all times relevant to the matters herein received messages at their address.
2. From March 2000 through June 2000, Cruz received medical treatment from Dr. Richard Krystal ("Dr. Krystal") due to injuries Cruz suffered from the automobile accident.
3. At all relevant times Respondent authorized and relied on his litigation coordinator, Gloria Northup ("Northup"), to communicate with Cruz's insurance company, Mercury Insurance Group ("Mercury"), regarding the personal injury case. Northup also worked for Centro Legal.
4. On March 28, 2000, Northup wrote a letter to Mercury advising that Respondent represented Cruz in the personal injury case and that Cruz would be making a claim for damages with Mercury. Northup's letter enclosed a designation of attorney form signed by Cruz.
5. On March 30, 2000, Mercury sent Cruz a letter requesting wage and medical authorizations. Mercury's letter stated in bold lettering that Cruz's claim would expire within one year of the date of accident, unless Cruz filed a lawsuit for bodily injury, settled the amount of coverage with Mercury or formally instituted arbitration proceedings by notifying Mercury in writing.

6. In April 2000 Cruz gave Respondent Mercury's letter dated March 30, 2000. Cruz also signed the wage and medical authorizations and gave them to Respondent.

7. On May 17, 2000, Mercury sent Respondent a letter at Respondent's law office denying Cruz' claim in the personal injury case. Respondent received Mercury's letter dated May 17, 2000. On May 26, 2000, Mercury sent Respondent a letter at Respondent's law office requesting a detailed statement from Cruz about the accident. Respondent received Mercury's letter dated May 26, 2000. Again on June 14, 2000, Mercury sent Respondent a letter at Respondent's law office requesting Cruz's signature on wage and medical authorizations. Mercury's letter also requested evidence of the uninsured status of the responsible party in the accident and Cruz' filing of an uninsured motorist certificate from the Department of Motor Vehicles (the "certificate"). Respondent received Mercury's letter dated June 14, 2000.

8. On July 5, 2000, Mercury sent Northup a letter, addressed to Respondent's law office, requesting Cruz's signed medical authorizations and medical bills regarding the personal injury case. Respondent and Northup received Mercury's letter dated July 5, 2000. On August 23, 2000, Mercury sent Northup a letter, addressed to Respondent's law office, again requesting Cruz's signed medical authorizations, medical bills and the certificate. Respondent and Northup received Mercury's letter dated August 23, 2000.

9. In August 2000, Dr. Krystal provided Respondent with a medical report and billing records for Cruz, who had been discharged as a patient in June 2000. Respondent received the medical report and billing records.

10. On September 13, 2000, Mercury sent Northup a letter, addressed to Respondent law office, requesting Cruz's signed medical and wage authorizations and the certificate. Respondent and Northup received Mercury's letter dated September 13, 2000. On October 11, 2000, Mercury sent Cruz a letter, addressed to Respondent's law office. Mercury's letter requested Cruz's signed medical and wage authorizations, treatment status and the certificate. Respondent received Mercury's letter dated October 11, 2000.

11. On December 13, 2000, Mercury Claims Examiner Marisa Navarro ("Navarro") telephoned Respondent's law office and spoke to Northup. At that time, Northup stated that Respondent was awaiting the certificate from the Department of Motor Vehicles and that upon receipt Respondent would forward the certificate to Mercury.

12. In December 2000, Respondent finally sent Navarro Cruz's signed medical and wage authorizations to Mercury. Subsequently, on December 27, 2000, Navarro sent Northup a letter, addressed to Respondent's law office, requesting Cruz's complete medical records and medical bills. Navarro's letter also stated that Mercury needed the certificate to evaluate Cruz's claim. Respondent and Northup received Navarro's letter dated December 27, 2000.

13. On January 15, 2001, Navarro again called Northup. At that time, Northup acknowledged that Respondent had received the certificate and that Respondent would forward the certificate and medical reports to Navarro.

14. On February 9, 2001, Navarro sent Northup a letter, addressed to Respondent's law office, requesting Cruz's medical reports and medical bills, along with the certificate. Respondent and Northup received Navarro's letter dated February 9, 2001.

15. On March 14, 2001, Navarro sent Respondent a letter at Respondent's law office. Navarro's letter requested proof that the statute of limitation was protected in the personal injury case, as more than one year had passed since Cruz's automobile accident. Respondent received Navarro's letter dated March 14, 2001.

16. On May 1, 2001, Navarro sent Respondent a letter at Respondent's law office. Navarro's letter requested Respondent submit proof that the statute of limitations had been protected in the personal injury case. Navarro's letter also requested the certificate, Cruz's medical records and medical bills. Respondent received Navarro's letter.

17. On June 5, 2001, Navarro spoke to Northup via telephone. At that time, Northup stated that Respondent would forward a Summons and Complaint (which Northup alleged had been filed to protect the statute of limitations), Cruz's medical records and medical bills to Mercury. That same day Navarro sent Northup a letter, addressed to Respondent's law office, confirming their telephone conversation on June 5, 2001. Respondent and Northup received Navarro's letter dated June 5, 2001.

18. On July 3, 2001, Navarro again spoke to Northup via telephone. At that time, Northup again stated that Respondent would forward the Summons and Complaint, Cruz's medical records and medical bills to Mercury.

19. On July 31, 2001, Navarro sent Northup a letter, addressed to Respondent law office, requesting the Summons and Complaint, Cruz's medical records and medical bills to be forwarded to

Mercury. Respondent and Northup received Navarro's letter dated July 31, 2001. On August 23, 2001, Navarro wrote to Northup again requesting the same information.

20. On September 5, 2001, the State Bar opened an inquiry, in case number 01-14413, based on a complaint by Cruz (the "Cruz matter"). Cruz's complaint alleged that Respondent had failed to inform Cruz about the status of the personal injury case and, consequently, that Cruz had no knowledge of the status of the personal injury case. In October 2001, State Bar Investigator James Murphy ("Murphy") contacted Respondent regarding the Cruz matter. At that time, Respondent stated that he would review Cruz' client file and provide a status update on the personal injury case.

21. In October 2001, Respondent stated to Murphy that he was still working on the personal injury matter. At or about that time, Respondent provided Murphy with a copy of a letter, dated July 23, 2001, purportedly sent to Navarro. The July 23rd letter stated that Respondent's office had submitted demand packages to Mercury regarding Cruz's property and medical damages. The July 23rd letter also stated that Cruz had rejected a \$3,000 settlement offer.

22. In reality, however, at no time had Respondent submitted demand packages to Mercury regarding the personal injury case, nor had Mercury made a settlement offer regarding the personal injury case. Moreover, at no time had Respondent or Northup sent the July 23rd letter to Navarro or anyone at Mercury. At the time he presented the July 23rd letter to Murphy, Respondent knew his office had not sent the July 23rd letter and knew that the contents of the July 23rd letter were false.

23. At no time did Respondent file a lawsuit on behalf of Cruz or otherwise protect the statute of limitations in the personal injury case. At no time did Respondent provide Mercury with Cruz's medical records, medical bills or the certificate..

24. From April 2000 through November 13, 2001, Cruz repeatedly telephoned Respondent at Respondent's office and left messages requesting a status update on the personal injury matter. At no time did Respondent return Cruz's telephone calls or otherwise respond to Cruz's requests for a status update on the personal injury case. Moreover, after the statute of limitations ran on his case Respondent never informed Cruz that the statute of limitations had expired on the personal injury case.

Conclusions of Law, case no. 02-O-12805

- By not protecting the statute of limitations in the personal injury case; not providing Mercury with the certificate, medical reports and medical bills, by not responding to the many requests by Mercury for information, by not properly controlling the course of Cruz's personal injury case, and by not properly supervising Northup, Respondent recklessly and repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct (RPC) 3-110(A).

- By not informing Cruz about the expiration of the statute of limitations, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services. Moreover, by not returning Cruz's telephone calls, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, both acts wilfully violated Business and Professions Code section 6068(m).

Case no. 02-O-13430

25. On April 4, 1998, Maria Elena Lopez ("Lopez") retained the legal services of Centro Legal (see above) to represent her in a probate matter concerning real estate left to Lopez by her deceased mother, Isabel Carrillo (the "estate matter"). At that time, Lopez discussed the estate matter with Jamie Fallen, a legal assistant at Centro Legal. On April 14, 1998, Lopez paid Centro Legal \$400 in advanced legal fees. Between May 1998 through 2001, Lopez paid Centro Legal an additional \$400 in advanced legal fees.

26. In August 2001, Lopez contacted Centro Legal regarding the status of the probate matter. At that time, Northup (see above) told Lopez that Respondent was the attorney handling Lopez's probate matter. Lopez obtained a business card of Respondent which listed Respondent as an attorney for Centro Legal ("Respondent's Centro Legal business card"). From August 2001 through December 2001, Lopez repeatedly telephoned Respondent at the telephone number on Respondent's Centro Legal business card. On several occasions, Lopez spoke to Respondent over the telephone. Each time they spoke, Respondent stated that Lopez should call him back later for a status report of the estate matter.

27. In the fall of 2001, Respondent met with Lopez regarding the estate matter at Respondent's El Monte office. At that meeting Lopez provided Respondent with documents regarding the estate matter.

28. On December 10, 2001, Respondent sent Lopez a letter stating that he was in the process of opening probate in the estate matter and that he was in communications with the County of San Bernardino. Respondent's letter also stated that Respondent would contact Lopez regarding her options in the estate matter. Respondent's letter was signed Timothy L. McCandless, Attorney at Law. However, at no time had Respondent communicated with the County of San Bernardino, open probate, filed pleadings or otherwise performed legal services on behalf of Lopez in the estate matter.

29. From December 2001 through July 2002, Lopez repeated telephoned Respondent at the telephone number listed on Respondent's business card. Each time Lopez telephoned, she left a message requesting Respondent to return her telephone call and provide a status report of the estate matter. At no time did Respondent return Lopez's telephone calls. In July 2002, Lopez terminated Respondent's employment and retained attorney Lance Kerr ("Kerr") to represent her regarding the estate matter.

30. On July 15, 2002, Kerr made a written request to Respondent that Respondent release Lopez's client file. Respondent received Lilly's letter. However, Respondent did not release Lopez's client file until that October. Respondent explains that it took time to locate the file at Centro Legal.

31. At all relevant times between in or about August 2001 through in or about October 2002, Respondent was Lopez's attorney.

Conclusions of Law, case no. 02-O-13430

- By not communicating with the County of San Bernardino, not opening probate, not filing pleadings or otherwise performing legal services on behalf of Lopez in the estate matter, and by not properly managing the Lopez file to the extent that he did not even know its physical location, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct (RPC) 3-110(A).

- By failing to return Lopez's repeated telephone calls from December 2001 through July 2002, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

- By failing to release Lopez's client file to either Lopez or her attorney until October 2002, after the State Bar became involved in the investigation, Respondent failed to release promptly to the client, upon termination of employment, all client papers and property, in wilful violation of RPC 3-700(D)(1).

32. In March 1999 Roberta Gonzales ("Gonzales") employed Respondent through Gloria Northup ("Northup"), a paralegal working for Respondent (see above), to represent her in a personal injury claim arising from an automobile accident occurring the month before.

33. On March 19, 1999, Respondent wrote to AAA Automobile Club of So. California ("AAA") informing the adjuster that he represented Gonzales with respect to her claim for damages arising out of her automobile accident in February 1999. Respondent enclosed the Designation of Attorney signed by Gonzales designating his office as her representative.

34. On April 6, 1999, AAA wrote to Respondent requesting additional information about Gonzales and her claim. At no time did Respondent respond to AAA's correspondence of April 6, 1999.

35. On June 22, 1999, AAA wrote to Respondent regarding Gonzales's claim. At no time did Respondent respond to AAA's correspondence of June 22, 1999. Again on August 12, 1999, AAA wrote to Respondent requesting medical reports and billing related to Gonzales. At no time did Respondent respond to AAA's correspondence of August 12, 1999.

36. On February 9, 2000, AAA wrote to Respondent requesting the current status of Gonzales's claim. At no time did Respondent respond to AAA's correspondence of February 9, 2000.

37. On April 5, 2000, AAA wrote to Respondent requesting a copy of the complaint filed in Gonzales's matter. At no time did Respondent respond to AAA's correspondence of April 5, 2000. Subsequently AAA closed their file on the Gonzales claim, as they assumed the statute of limitations had passed.

38. Between April 1999 and August 2001, Gonzales made several telephone calls to Respondent's office per month requesting the status of her case. Gonzales always left a message for Respondent to call her along with her telephone number. Respondent did not respond to Gonzales's telephone messages.

39. Respondent constructively terminated his employment with Gonzales. At no time did he inform Gonzales of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Gonzales.

Conclusions of Law, case no. 02-O-13411

– By failing to respond to AAA's correspondence of April 6, 1999, June 22, 1999, August 2, 1999, February 9, 2000 and April 5, 2000 regarding Gonzales's claim; and by failing to protect the statute of limitations, Respondent recklessly and repeatedly failed to perform legal services with competence, in wilful violation of RPC 3-110(A).

– By failing to respond to Gonzales's telephone calls, Respondent failed to respond to Gonzales's reasonable status inquiries, in wilful violation of Bus. & Prof. Code sec. 6068(m).

– By failing to give notice to Gonzales of his termination of employment with her or to take any steps to avoid reasonably foreseeable prejudice to his client, Respondent improperly withdrew from employment with a client, in wilful violation of RPC 3-700(A)(2)..

AGGRAVATING CIRCUMSTANCES - Cont'd from page 2.

1. Prior Discipline:

- State Bar Court case nos. 93-O-10364 et al. (SO46335).
Date prior discipline effective: August 12, 1995
Violations: RPC 4-100(A), 4-100(B)(4) (two counts); Bus. & Prof. Code sec. 6068(o)
Degree of Prior Discipline: 30 days actual, 12 months stayed suspension.
- State Bar Court case no. 95-O-11810 et al. (SO72495)
Date prior discipline effective: November 14, 1998
Violations: Bus. & Prof. Code sec. 6068(d), 6068(c)
Degree of prior discipline: 30 days actual suspension; 18 months stayed.

2. Indifference Standard 1.2(b)(v)

Respondent did not take steps to ensure that his former clients' cases were handled properly. He relied improperly on Northup and on Centro Legal to shepard the cases through the insurance claims system. However, he failed to give proper oversight to his agents working on the cases, and failed to follow through on legal matters after he personally took part in them. In spirit and in fact, he was absent.

3. Harm. Standard 1.2(b)(iv)

Respondent's failures to perform and his reliance on staff, especially at Centro Legal, to perform duties which he should have done himself, resulted in clients Cruz and Gonzales not being able to pursue their lawsuits and deprived them of their day in court.

AUTHORITIES SUPPORTING DISCIPLINE

Standard 2.4(b): culpability of a member of wilfully failing to perform in matters not constituting a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

In re Bach (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. Two counts of failure to perform, failure to communicate; improper withdrawal; failure to promptly return unearned fees and failure to cooperate in investigation. Two priors with similar misconduct, some aggravation, little mitigation. Received nine months actual suspension following trial.

Conroy v. State Bar (1991) 53 Cal.3d 495. Failure to perform, failure to keep client informed of status of case and misrepresented facts concerning status of the case to the client. When client fired attorney he failed to execute a substitution of attorney form and failed to cooperate with the successor attorney. Two priors. Conroy failed to participate in the proceedings. Received one year actual suspension following default trial.

Farnham v. State Bar (1976) 17 Cal.3d 605. In two matters, attorney failed to perform services competently, failed to communicate with and deceived his clients regarding the status of their cases and in one matter, attorney practiced law while suspended due to prior disciplinary matter. Similar misconduct in four separate prior disciplinary matters. Court found serious pattern of misconduct involving wilful deceit of clients. Received six months actual suspension.

ADDITIONAL PROBATION CONDITION REGARDING CENTRO LEGAL PROVISION

Respondent contends that his troubles stemmed from his connection with Centro Legal Hispanico ("Centro Legal"). The parties and the court believe that it is appropriate for him to sever all professional relationships with Centro Legal as one way of beginning rehabilitation. Therefore, Respondent agrees that, as one condition of probation, he will:

- (1) accept no new legal work of any kind from Centro Legal;
- (2) employ no one, whether full-time or contract, who also works in any capacity for Centro Legal;
- (3) accept no compensation from Centro Legal, nor give anything of value to Centro Legal, in connection with the practice of law;
- (4) not utilize Centro Legal for office space or office staffing.

This condition shall begin thirty (30) days after the effective date of the Order herein, and shall last the entire period of probation.

DISMISSALS

The parties respectfully request the court dismiss the following cases and/or counts:

- Case no. 02-O-12805: counts three, four and five (all moral turpitude charges) in interests of justice; the matters are largely addressed in aggravation
- Case no. 02-O-15143 in its entirety (two counts) for proof problems and interest of justice
- Case no. 02-O-11346 in its entirety (one count) for proof problems and interest of justice
- Case no. 02-O-13411: count three (UPL) for proof problems and interest of justice.
- Case no. 02-O-13430: count five (moral turpitude) in interest of justice.

RULE 133 NOTICE OF PENDING MATTERS

The notice referred on page one, section A(6), was made by letter to Respondent's counsel dated July 10, 2003.

7-15-03
Date

[Signature]
Respondent's signature

TIM M CAMPBELL
print name

7/14/03
Date

[Signature]
Respondent's Counsel's signature

DAVID A. CLARE
print name

July 22, 2003
Date

[Signature]
Deputy Trial Counsel's signature

Brooke Schafer.
print name

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.

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 135(b), 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 953(a), California Rules of Court.)

7/29/03
Date

[Signature]
Judge of the State Bar Court
RICHARD A. HONN

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 July 30, 2003, 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:

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

**DAVID ALAN CLARE
12791 WESTERN AVE #J
GARDEN GROVE CA 92841**

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

BROOKE SCHAFER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 30, 2003**.



Bernadette C. O. Molina
Case Administrator
State Bar Court