

<p>Counsel for the State Bar                  Office of the Chief Trial Counsel                  Enforcement                  Monique T. Miller, #212469                  Deputy Trial Counsel                  1149 South Hill Street                  Los Angeles, CA 90015-2299                  Tel.: (213) 765-1486</p>	<p>Case number(s)                  02-0-15639</p> <p><b>PUBLIC MATTER</b></p> <p>kwiktag® 031 975 329  </p>	<p>(for Court's use)</p> <p><b>FILED</b>                  OCT 06 2003 <i>hec</i></p> <p>STATE BAR COURT                  CLERKS OFFICE                  LOS ANGELES</p>
<p>Counsel for Respondent                  Robert Louis Guevara                  IN PRO PER                  1936 Huntington Dr., #206                  South Pasadena, CA 91030                  Tel.: (626) 441-8890</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> 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                  ROBERT LOUIS GUEVARA</p> <p>Bar # 80971</p> <p>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 19, 1978  
 (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 11 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):
  - costs added to membership fee for calendar year following effective date of discipline
  - costs to be paid in equal amounts prior to February 1 for the following membership years:  
2004 and 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 [fo. 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 01-0-01891

(b)  date prior discipline effective August 13, 2003

(c)  Rules of Professional Conduct/ State Bar Act violations: Business & Professions Code section 6068(o)(3) - Failure to Report Sanctions

(d)  degree of prior discipline Private Reprimand

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

(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~~ 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)  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.
- (10)  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.
- (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. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of Two (2) Years

- 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 Alfred Mesa and/or Angelina Orona [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \$3,764, plus 10% per annum accruing from September 5, 2003 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 Two (2) Years, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.

- (4)  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.
- (5)  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.

(6)  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. In Case 01-O-01891, Respondent was required to attend & pass Ethics School within 1 year from August 13, 2003

No Ethics School recommended.

(7)  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.

(8)  The following conditions are attached hereto and incorporated:

- Substance Abuse Conditions       Law Office Management Conditions
- Medical Conditions                       Financial Conditions

(9)  Other conditions negotiated by the parties:

Respondent, with or without the assistance of additional counsel, will bring the Mesa Estate probate matter to a close, on behalf of Alfred Mesa and Angelina Orona, within one year from the effective date of the discipline herein, and provide the Probation Unit with satisfactory proof of completion of the Mesa Estate probate matter.

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 within one year. 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. In Case No. 01-O-01891, Respondent was required to provide proof of passage of the MPRE within 1 year from August 13, 2003

In the Matter of <p style="text-align: center;">ROBERT LOUIS GUEVARA</p>	Case Number(s): <p style="text-align: center;">02-0-15639</p>
A Member of the State Bar , Bar # 80971	

**Financial Conditions**

- a.  Respondent shall pay restitution to Alfred Mesa & Angelina <sup>Orona</sup> [payee(s)] (or the Client Security Fund, if appropriate), in the amount(s) of \$3,764, plus 10% interest per annum accruing from September 5, 2003, and provide proof thereof to the Probation Unit, Office of the Chief Trial Counsel,
- no later than \_\_\_\_\_
- or  
 on the payment schedule set forth on the attachment under "Financial Conditions, Restitution." SEE PAGE 10
- b.  1. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent shall file with each required report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Probation Unit, 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 Probation Unit 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.
- c.  Within one (1) year of the effective date of the discipline herein, respondent shall supply to the Probation Unit satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Financial Conditions form approved by SBC Executive Committee 10/16/00)

**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        ROBERT L. GUEVARA, Bar # 80971

CASE NUMBER:            02-O-15639

Respondent admits that the foregoing facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**FACTS AND CONCLUSIONS OF LAW.**

**Case No. 02-O-15639**

**FACTS**

1.        In or about January 2000, Angelina Orona (“Orona”) and Alfred Mesa (“Mesa”) employed Respondent to represent them in a probate matter for their father’s estate (the “Mesa Estate matter”. Orona is the estate’s executor.
  
2.        Between on or about January 16, 2000 and August 3, 2000, Respondent was paid \$3,500 for his services.
  
3.        On or about February 25, 2000, Respondent filed A Notice of Petition to Administer Estate on behalf of Orona in Case No. BP 060641, Los Angeles Superior Court.
  
4.        On or about August 29, 2000, Respondent requested and received \$500 from Orona to cover the costs for newspaper advertisements.
  
5.        On or about December 8, 2001, Respondent filed an Amended Status Report for the purpose of creating a “special needs trust” for one of the beneficiaries who is a disabled adult. The Amended Status Report stated that “the proposed distribution of the estate should be determinable in the next few weeks.”
  
6.        On or about January 8, 2002, Respondent filed an identical Amended Status Report.

7. On or about August 6, 2002, Respondent sent Mesa a letter enclosing a delinquent Metropolitan News invoice of \$264 and stating that Respondent was “working on the petition to extend time for administration of the estate and will submit to the court as soon as possible.”

8. On August 8, 2002, Orona issued a check on August 8, 2002 to pay the \$264 outstanding invoice which should have been paid from the \$500 paid to Respondent in August 2000 to cover costs for newspaper advertisements.

9. On or about December 16, 2002, Respondent wrote to the State Bar, stating that he would resolve the Mesa Estate matter within “a period of two weeks”.

10. In or about July 2003, Respondent spoke with Mesa and told him that another attorney, a friend of Respondent, would handle the Mesa Estate matter.

11. On or about August 25, 2003, Mesa spoke to Respondent who again told him that he would contact another attorney to handle the Mesa Estate matter.

12. To date, Respondent has not yet settled the Mesa Estate probate matter.

13. Throughout in or about 2002 and early 2003, the personal representative of the Mesa’s Estate, Angelina Orona (“Orona”) called Respondent’s office on several occasions, leaving telephone messages requesting that Respondent return her calls for a status update. Respondent failed to respond to Orona’s calls.

14. Respondent did not earn the \$3,500 fees that were advanced to him to settle the Mesa Estate probate matter.

#### CONCLUSIONS OF LAW

15. By failing to resolve the Mesa Estate probate matter for more than three years and timely pay \$264 in costs for newspaper advertisements on behalf of Mesa and Orona, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

16. By failing to provide the executor of the Mesa’s Estate with a status update on the estate matter despite numerous requests, 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).

17. By failing to refund all or any part of the \$3,500.00 to Mesa and Orona, Respondent failed to refund promptly any part of a fee paid in advance that was not earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was September 5, 2003.

### **AUTHORITIES SUPPORTING DISCIPLINE.**

#### The Standards for Attorney Sanctions for Professional Misconduct (the "Standards"):

Standard 1.6(a) provides that where "two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanctions imposed shall be the more or most severe of the different applicable sanctions."

Standard 2.4(b) provides:

Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension upon the extent of the misconduct and the degree of harm to the client. (emphasis added).

#### Aggravation:

Standard 1.2(b)(iv) - Harm to the client or public. Mr. Guevara caused his clients to anguish over the closing of the estate matter for a period of over three years.

#### Case Law

In *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, the respondent had no prior discipline. In a single case, the respondent failed to resolve a dispute with his clients in an ethically acceptable manner; and instead withdrew from employment in a way prejudicial to his client's interests, abandoned their case and kept their file. The respondent also failed to return unearned fees. Aguiluz received one year stayed suspension and two years probation.

In *Lester v. State Bar* (1976) 17 Cal. 3d 547, the Court determined that an attorney's wilful failure to perform legal services in four matters, combined with conduct involving failure to return unearned fees and misrepresentations warranted a two years stayed suspension and six months actual suspension. The attorney had practiced law for many years and the misconduct occurred over a two year time period.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 5, 2003, the estimated prosecution costs in this matter are approximately \$2,076.94. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

#### **FINANCIAL CONDITIONS, RESTITUTION.**

Starting from the effective date of discipline in this matter, Respondent must make restitution to Alfred Mesa and/or Angelina Orona or the Client Security Fund if it has paid, in the principal amount of \$3,764.00 plus interest at the rate of 10% per annum from September 5, 2003.

The restitution payment shall be made in **quarterly installments of at least \$475 per installment** until paid in full and furnish satisfactory evidence of such restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.

Date

9/22/03

Respondent's signature

*[Handwritten Signature]*

ROBERT LOUIS GUEVARA  
print name

Date

Respondent's Counsel's signature

print name

September 23, 2003

Deputy Trial Counsel's signature

*Monique T. Miller*

MONIQUE T. MILLER  
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.

*(A)(7)(box 2) change 2004 and 2005 to 2005 and 2006*

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.)

Date

10/1/03

Judge of the State Bar Court

*Alban J. Nile*

**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 Los Angeles, on October 6, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed October 6, 2003**

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 Los Angeles, California, addressed as follows:

**ROBERT L GUEVARA ESQ  
1936 HUNTINGTON DRIVE #206  
SOUTH PASADENA CA 91030**

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

**MONIQUE MILLER, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 6, 2003**.

  
**Angela Owens-Carpenter**  
Case Administrator  
State Bar Court