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State Bar Court of California

Hearing Department

Los Angeles

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Kristin L. Ritsema Supervising Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299 (213) 765-1235</p> <p>Bar # 149966</p>	<p>Case Number (s) 03-O-02281 - RAH and 05-O-03101</p>	<p>(for Court's use)</p> <p>FILED</p> <p>DEC 03 2007</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur L. Margolis Margolis & Margolis 2000 Riverside Drive Los Angeles, California 90039-3758 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter Of:</p> <p>Shepard Sanford Kopp</p> <p>Bar # 174612</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 12, 1994**.
- (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 **27** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (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: **two billing cycles following the effective date of the Supreme Court order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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
 - (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) **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. **Respondent's misconduct harmed both Mr. Jauregui and Mr. Castaneda in that they were prosecuted for conspiracy to obstruct justice based on their participation in Respondent's plan. Further, Respondent's misconduct harmed the administration of justice and wasted judicial and other resources in that the underlying DUI matter dragged on for more than a year before it was revealed to the court and prosecutor that Mr. Castaneda was not the person arrested for the DUI.**
- (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.~~ **Respondent's misconduct involved multiple acts of wrongdoing in two different matters, and the misconduct in the Jauregui/Castaneda DUI matter took place over the course of a year.**
- (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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Respondent has been candid and cooperative with the State Bar during the disciplinary investigation and proceedings. Respondent also was candid and cooperative with the Los Angeles County District Attorney's Justice System Integrity Division investigation in the underlying matter.**
- (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

No prior discipline: Although the current misconduct is deemed serious, Respondent was admitted to practice law in California in December 1994 and has no prior record of discipline.

Good moral character: Respondent has submitted several letters from people who attest to Respondent's good character and who are aware of the full extent of his misconduct.

Remorse: Respondent has expressed remorse and has accepted responsibility for his misconduct.

Volunteer work/community involvement:

Since his youth, Respondent has been involved in politics, volunteering in various political campaigns. He has a particular interest in transparency in governmental affairs and campaign finance reform. As an adult, he has remained politically active. For example: prior to attending law school, he worked on two initiative campaigns dealing with housing issues in San Francisco; he debated in favor of Proposition 87, a statewide campaign finance reform initiative which passed, was invalidated by the federal court because a competing measure got more votes, and which Respondent and others attempted to revive after the competing initiative was struck down by a federal court; as an attorney, Respondent wrote on a pro bono basis a portion of the brief for the original proceeding in the California Supreme Court in *Kopp v. FPPC* (1995) 11 Cal4th 607, in which the plaintiffs asked the court, unsuccessfully, to revive and reform the statute; Respondent worked on Frank Jordan's campaign for mayor of San Francisco in the early 1990's and Tom Hayden's campaign for mayor of Los Angeles in 1997, and supported Antonio Villaraigosa's first run for mayor.

Respondent decided to attend law school because he believed that as a lawyer, he could be in a position to affect public policy. While in law school, he served on the Library Commission of San Francisco at a time when the Commission was planning the building of the New Main Library.

After graduating from law school, Respondent worked for more than four years as a lawyer with the Los Angeles County Public Defender's Office. In the fall of 1999, he then began working at Geragos & Geragos. During his years at Geragos & Geragos, Respondent has devoted a significant amount of time to dozens of pro bono cases. He estimates that over the past seven years, he has averaged over 100 hours per year on pro bono cases, including but not limited to the following:

In 2000, Respondent represented an indigent defendant in a non-violent offense third-strike case in Pasadena. During jury selection, he managed to settle the case for a ten-year plea bargain instead of 25 years to life.

From 2000 to 2002, Respondent represented Alex Sanchez, an ex-gang member who founded Homies Unidos, a non-profit gang violence prevention and intervention organization with projects in El Salvador and Los Angeles, California. Mr. Sanchez was arrested by officers of the Rampart division on an immigration warrant in violation of a Los Angeles Police Department special order and turned over to federal immigration authorities, where he faced deportation to El Salvador because of prior felony convictions. Respondent wrote the motion to withdraw his plea to a

felony charge, which was granted. Subsequently, Mr. Sanchez's other felony conviction was vacated and he avoided deportation to El Salvador. Mr. Sanchez received a civil settlement from a lawsuit that Respondent and others from Geragos & Gergos brought on his behalf, and he continues to run Homies Unidos here in Los Angeles.

In 2001 to 2002, Respondent represented the plaintiff in a lawsuit filed against the City of San Francisco under the CEQA act seeking to stop an unjustified rate increase by the city's trash hauler.

In 2003 to 2004, Respondent represented a Mr. Gonzalez, who was shot in the back by a Los Angeles Police Department officer as he was running away from the officer with a gun tucked in his waistband. The officer and his partner claimed that Mr. Gonzalez pointed his gun at them, and that's why the officer shot him. Two civilian witnesses contradicted the officers' version of events. Mr. Gonzalez was nonetheless charged with assault with a firearm on a peace officer and faced a potential sentence of more than ten years in prison. After a jury trial, Mr. Gonzalez was acquitted.

In 2006, Respondent represented a Mr. Anderson in the United States District Court for the Northern District of California on charges of contempt for refusing to testify before the grand jury. On this case alone, which involved the district court proceedings as well as two appeals and a petition for rehearing en banc to the Ninth Circuit Court of Appeal, Respondent estimates that he worked over 100 hours at no charge.

Since 2002, Respondent has also represented on a pro bono basis in criminal cases numerous members of the Western Diocese of the Armenian Apostolic Church. He has also represented and advised many friends, acquaintances, and members of his community in matters ranging from traffic tickets to felony prosecutions at no charge.

Respondent volunteers his time serving as a judge for mock trials for a trial advocacy class taught at Southwestern Law School. He has lectured at a CLE seminar on juvenile justice and at a CLE program called "Bridging the Gap," which is a specially-designed seminar for new lawyers. He also recently served as a panel member for the annual moot court competition at the UCLA School of Law.

Other: Were he called to testify, Respondent would testify as follows: Concerning his representation of Christopher Jauregui and Cesar Castaneda, he made the decisions he did because of his good-faith, but mistaken, belief that he was pursuing the best strategy for both clients. He never intended to favor nor does he believe that he favored the interests of Jauregui over those of Castaneda. He did not make any decision nor perform any action--legal, strategic or otherwise--for pecuniary gain. Neither did he intend to mislead the court or use means inconsistent with truth, as he has always had the utmost respect for judges and the justice system. However, he now understands that the effect of his actions was to mislead the court and that he did in fact use means inconsistent with truth. He believed that he was required to preserve the confidences of his clients, at every peril to himself, pursuant to Business and Professions Code section 6068(e), and that the actions he took on behalf of his clients were intended to protect those confidences without running afoul of the mandates of section 6068(d). Respondent now acknowledges his mistakes.

D. Discipline:

- (1) Stayed Suspension:
- (a) Respondent must 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 as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **thirty (30) days**.

- 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 as set forth in the Financial Conditions form attached to this stipulation.
- 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 must 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 must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there

are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) 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

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
 - No MPRE recommended. Reason: .
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

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- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

In the Matter of
Shepard Sanford Kopp,

Case number(s):
03-O-02281 - RAH and 05-O-03101

A Member of the State Bar

Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ **six (6)** months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **six (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will 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 must 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 must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Shepard Sanford Kopp

CASE NUMBERS: 03-O-02281 - RAH and 05-O-03101

FACTS AND CONCLUSIONS OF LAW.

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

Jurisdiction

1. Respondent was admitted to the practice of law in the State of California on December 12, 1994 and since that time has been a member of the State Bar of California.

Facts - Case No. 03-O-02281

2. In August 1998, Christopher Jauregui (“Jauregui”) employed the law firm of Geragos & Geragos (the “law firm”) to represent him in a felony robbery case, filed on July 31, 1998 in the Los Angeles County Municipal Court, Glendale Judicial District, and entitled, *People v. Christopher Jauregui*, case number GA036761. Attorney Mark Geragos (“Geragos”), a partner of the law firm, represented Jauregui in the robbery case. Respondent was and still is an associate with the law firm.

3. On January 11, 1999, the District Attorney filed in the Los Angeles County Superior Court an information against Jauregui under case number GA036761 alleging one felony count of second degree robbery in violation of Penal Code section 211 (the “robbery case”).

4. On April 14, 1999, the District Attorney filed an amended information against Jauregui in the robbery case. The amended information included the original one felony count of second degree robbery and added a second felony count of grand theft person in violation of Penal Code section 487(c).

5. In April 1999, Geragos negotiated a plea agreement for Jauregui in the robbery case. On April 15, 1999, Jauregui pled no contest to one felony count of grand theft person in violation of Penal Code section 487(c). The court accepted Jauregui’s plea, convicted him of the one felony count of grand theft person, and dismissed the remaining robbery count. On June 8,

1999, the court in the robbery case suspended imposition of sentence and placed Jauregui on formal probation for a period of three years with conditions including, *inter alia*: serving 90 days in Los Angeles County jail with credit for 9 days served, which jail time could be on electronic monitoring; obeying all laws; and paying restitution. According to the deal Geragos negotiated for Jauregui in the robbery case, there was an option to have the felony conviction reduced to a misdemeanor and reverted to summary probation if Jauregui complied with the terms of the formal probation, including obeying all laws. Geragos continued to represent Jauregui during the probation phase of the robbery case.

6. On June 8, 2000, Respondent made an appearance on behalf of Jauregui at a progress-report hearing in the robbery case. The court ordered Jauregui to be present at the next court hearing.

7. On July 15, 2000, while on felony probation in the robbery case, Jauregui was arrested by California Highway Patrol ("CHP") Officer Charles Murray for driving under the influence of alcohol. Jauregui falsely identified himself to Officer Murray as "Cesar Castaneda." Cesar Castaneda ("Castaneda") was present in the car with Jauregui at the time of his arrest. Castaneda provided Jauregui with Castaneda's birth date, and Jauregui then represented Castaneda's date of birth as his own to the arresting officer. Castaneda also gave the officer a false name, but he was not arrested. Two other people were in the vehicle with Jauregui and Castaneda when Jauregui was stopped and arrested for driving under the influence.

8. As part of his July 15, 2000 arrest, Jauregui was booked, photographed, and fingerprinted under the name of Castaneda. Jauregui also consented, in the name of Castaneda, to give a blood sample for testing. His blood sample was found to contain 0.20 percent alcohol.

9. During Jauregui's July 15, 2000 arrest, Officer Murray issued a Department of Motor Vehicles ("DMV") Under Age 21 Administrative Per Se Suspension/Revocation Order and Temporary Driver License to Jauregui in the name of Castaneda. This order referenced Castaneda's driver's license number and notified that Castaneda's driver's license would be suspended for one year or revoked for two or three years effective 30 days from the issue date of the order. The order further notified that Castaneda had only ten days from the date of the order to request a hearing with the DMV to show that the suspension or revocation was not justified.

10. During Jauregui's July 15, 2000 arrest, a CHP officer issued a Notice to Appear citation to Jauregui in the name of Castaneda. Jauregui signed the Notice to Appear using Castaneda's name. The Notice to Appear citation required Jauregui to appear in the Alhambra court on August 28, 2000. After he received the citation, Jauregui was released.

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11. Sometime shortly after his July 15, 2000 DUI arrest, Jauregui met with Geragos and told him about the DUI arrest. Geragos instructed Jauregui to immediately report the matter to his probation officer in the robbery case.

12. On August 7, 2000, Respondent made an appearance on behalf of Jauregui at a probation hearing in the robbery case. Jauregui did not appear for the hearing. Jauregui's probation was revoked.

13. On August 11, 2000, a criminal case was filed related to Jauregui's July 15, 2000 arrest. Because Jauregui had given Castaneda's name when he was arrested, the criminal case was filed under the name of "Cesar Castaneda," not "Christopher Jauregui," in the Los Angeles County Superior Court, Alhambra Judicial District, and was entitled, *People v. Cesar Humberto Castaneda*, case number 0AL02332 (the "DUI case"). In the DUI case, Jauregui, charged as Castaneda, was charged with three counts including: one misdemeanor count of driving under the influence of alcohol or drugs in violation of Vehicle Code section 23152(a); one misdemeanor count of driving with a blood alcohol level of 0.08 percent or higher in violation of Vehicle Code section 23152(b); and one infraction count of driving, while under the age of 21 years, with a blood alcohol level of 0.05 percent in violation of Vehicle Code section 23140(a).

14. On August 25, 2000, Geragos appeared at a probation hearing for Jauregui in the robbery case. The court had been made aware of Jauregui's July 15, 2000 arrest and was aware that there was a DUI case pending as a result. However, the court was unaware that the DUI case had been filed under Castaneda's name. During the probation hearing, despite the DUI arrest, the court reinstated Jauregui's probation on the same terms and conditions as previously ordered.

15. On August 25, 2000, Jauregui also met with his probation officer in the robbery case, Myron Grigsby ("Grigsby"). Before this meeting, Grigsby had discovered Jauregui's July 15, 2000 arrest through his department's computer system under Jauregui's name. During Grigsby's meeting with Jauregui, he confronted Jauregui about the arrest. Jauregui confirmed that he was arrested on July 15, 2000, and Jauregui informed Grigsby of the pending DUI case, but Grigsby was still unaware that the DUI case had been filed under Castaneda's name. Grigsby requested that Jauregui keep him informed about the DUI case.

16. On August 28, 2000, the DUI case was called for arraignment. No one appeared for the defendant in the case. The court issued a bench warrant in Castaneda's name.

17. Geragos assigned Respondent to handle the DUI case. On August 29, 2000, Jauregui met with Respondent and executed a retainer agreement employing the law firm for representation in the DUI case. Jauregui agreed to pay the law firm a \$5,000 fee for the representation. He eventually paid the law firm \$4,300 of the agreed fee. During the August 29,

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2000 meeting, Jauregui informed Respondent that Castaneda was a passenger in the car that Jauregui was driving at the time of his arrest. During the meeting, Jauregui informed Respondent that at the time of his arrest, he had falsely identified himself to the arresting officer as "Cesar Castaneda" and identified Castaneda's date of birth as his own, with Castaneda's permission.

18. On August 31, 2000, Respondent went to the Alhambra courthouse to attempt to obtain discovery related to the DUI case. He discovered that there was an outstanding warrant in the name of "Cesar Castaneda." He then went to Division 5 in the Alhambra courthouse, requested from the clerk the discovery for the DUI case, and was given a copy of the complaint and the arrest report related to the DUI case, both of which were filed in the DUI case and were available to the public.

19. After learning that there was an outstanding arrest warrant in the name of Cesar Castaneda and receiving the complaint and arrest report in the DUI case, and with knowledge that Jauregui had used the name "Cesar Castaneda" when he was arrested on July 15, 2000 and that Jauregui and Castaneda were two different people, Respondent did not inform the court or prosecutor that the case had been filed against Jauregui under an incorrect name. Based on what Jauregui had told him, Respondent believed that Castaneda was not arrested by the police or guilty of the charges filed by the prosecutor and knew that the prosecutor intended to bring the charges against Jauregui. At no time did Respondent request the court to correct the arrest warrant so that it reflected the true name of his client, Jauregui.

20. On September 29, 2000, Respondent met with Jauregui and Castaneda in his office. During the meeting, Respondent informed them that the statute of limitations for filing new charges against Jauregui for driving under the influence was one year from the date of Jauregui's arrest. Respondent advised delaying resolution of the DUI case erroneously filed under Castaneda's name for one year. Respondent advised Jauregui and Castaneda that once the one-year statute of limitations expired, he would inform the court that charges had been filed against the wrong person, and the DUI case would likely be dismissed as to Castaneda. Respondent further advised Jauregui and Castaneda that if the DUI case could be continued past the one-year statute of limitations for a misdemeanor, and subsequently dismissed, then he did not think that the District Attorney's Office would be able to prosecute Jauregui for driving under the influence because of the statute of limitations, assuming it was ever discovered that Jauregui was the actual person arrested.

21. Prior to their meeting with Respondent on September 29, 2000, Jauregui and Castaneda were committed to pursuing an approach that would avoid disclosure of and possible criminal exposure for their having falsely identified themselves at the time of the July 15, 2000 DUI arrest. Jauregui and Castaneda had been friends for several years. Castaneda also wanted to assist Jauregui as much as possible, without getting himself into additional trouble.

22. Prior to meeting with Jauregui and Castaneda on September 29, 2000, Respondent conducted no legal research regarding the validity or accuracy of his advice to Jauregui and Castaneda, nor the potential criminal consequences that they could face if his advice were followed. Nor did Respondent conduct any such legal research at any time after the September 29, 2000 meeting through July 24, 2001, when it was eventually disclosed to the court that Castaneda was not the person arrested for DUI on July 15, 2000. Under existing law at the time, if an individual was charged with a crime under a fictitious or erroneous name, the true name of the perpetrator could be substituted for the fictitious or erroneous name at any stage of the proceeding. Further, under existing law at the time, the statute of limitations was tolled by fraudulent conduct.

23. Were he called to testify, Respondent would testify that he had handled many misdemeanor cases as a Los Angeles County Deputy Public Defender in which a person who was arrested gave a false name, often of another real person, and the arrestee was then released. Misdemeanor charges were then filed against the false name given by the true arrestee, the true arrestee failed to appear in court for the arraignment, and the innocent person whose name was misused was later arrested on a warrant. Respondent would testify that in many of these cases, once it was shown to the court and the District Attorney that the person whose name was falsely used was not the person who actually was arrested originally, the District Attorney would dismiss the case without making an effort to ascertain the identity or true name of the original true arrestee.

24. Castaneda hired Respondent for representation in the DUI case. On September 29, 2000, Castaneda executed a retainer agreement for the law firm to represent him in the DUI case at no charge to Castaneda.

25. On September 29, 2000, Respondent had Jauregui and Castaneda execute documents purporting to be written conflict waivers for the dual representation in the DUI case. The waivers were inadequate as they did not address the actual conflict that existed between Jauregui and Castaneda; nor did they address the actual and reasonably foreseeable adverse consequences to the clients.

26. Were he called to testify, Respondent would testify that at that time in his career, he had virtually no experience with dual representation and that he used one of the law firm's form conflict waivers to create the waivers that Jauregui and Castaneda signed. Were he called to testify, Respondent would also testify that at the time, he thought that the conflict between Jauregui and Castaneda was only a potential conflict that could be adequately addressed by the form waivers. Respondent understands now that there was an actual conflict between Jauregui and Castaneda.

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27. Effective on August 14, 2000, Castaneda's driver's license was suspended by the DMV because Jauregui had used Castaneda's identity at the time of his July 15, 2000 DUI arrest, and Castaneda had never requested an *admin per se* hearing with the DMV to show that suspension or revocation of his license was not justified. Failure to request an *admin per se* hearing meant that Castaneda's driver's license was automatically suspended 30 days after Jauregui's arrest. Castaneda's driver's license remained suspended through at least September 20, 2001.

28. The law firm continued to represent both Castaneda and Jauregui in the DUI case from September 29, 2000 to July 24, 2001, when the firm disclosed to the court that the prosecution had filed the DUI case against the wrong person.

29. At no time during the pendency of the DUI case did Respondent or any other member of the law firm disclose to the court that the law firm represented both Jauregui and Castaneda in the DUI case.

30. At no time until July 24, 2001 did Respondent or any other member of the law firm disclose to the court that the prosecution had erroneously named Castaneda as the defendant in the DUI case.

31. On October 5, 2000, a partner in the law firm, Paul Geragos, appeared for the defendant in the DUI case pursuant to the issue of the warrant, without Castaneda or Jauregui present. The court recalled the bench warrant, but then ordered that a warrant re-issue given the non-appearance by the defendant. The court ordered that the warrant be held until October 17, 2000.

32. On October 17, 2000, Respondent appeared for the defendant in the DUI case and requested that the court recall the bench warrant against Castaneda. Neither Jauregui nor Castaneda was present in court. Respondent informed the court that Castaneda had to take his father to the hospital for a medical emergency. Respondent further stated that he did not know the nature of the emergency, and he was unable to reach Castaneda. (The State Bar does not contend that any of these statements made by Respondent were false.) Respondent requested that the court hold the warrant for a few more days. The court continued the hearing to later in the month.

33. On October 25, 2000, Respondent appeared with Castaneda in the DUI case. Jauregui was not present. Respondent requested that the court set aside the arrest warrant because Castaneda was in court. The court noted that the defendant originally was given a citation to appear. The court set aside the warrant. Castaneda waived arraignment, the reading of the complaint, and the statement of constitutional and statutory rights. Castaneda entered a

not-guilty plea. Respondent requested that the pre-trial hearing be set for November 30, 2000. Castaneda waived the right to speedy trial until November 30, 2000 and for 30 days thereafter.

34. On November 3, 2000, Respondent submitted a draft motion for discovery, prepared by Respondent, to the prosecution in the DUI case. In the motion, which was later filed with the court on December 15, 2000, Respondent requested, inter alia, "The radio transmissions for the entire response to the scene and the arrest of *Mr. Castaneda* on July 15, 2000, including any printouts to or from a mobile digital terminal." (Italics added).

35. On November 30, 2000, Respondent appeared with Castaneda in the DUI case. Jauregui was not present. Respondent informed the court that the parties were trying to resolve discovery issues. Both parties requested a discovery hearing. At issue in discovery was a police report on the person who was arrested after "the defendant." The prosecution objected to the production of the report as irrelevant to the DUI case. When the court asked Respondent if the report was relevant, Respondent replied that the report was relevant because "that person is obviously a percipient witness to my client's state of sobriety at the time." Respondent represented that because the person who was arrested after the defendant was a percipient witness, he was entitled to the name and address of the person. The court requested that Respondent file a declaration because of the privacy issue involved. Respondent replied that he would be happy to file a motion with a declaration. Respondent requested that the hearing be set for December 27, 2000, because the prosecutor said that everything would be available by that date. Respondent waived time to 30 days and beyond.

36. On December 15, 2000, Respondent caused to be filed with the court in the DUI case a motion for discovery which requested the same information and documents as the draft motion for discovery prepared by Respondent and submitted to the prosecution on November 3, 2000.

37. On December 27, 2000, an associate with the law firm, Lara Yeretsian ("Yeretsian"), appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. Yeretsian addressed the pending discovery motion. The prosecution opposed discovery of the arrest report of the person arrested after the accused as being irrelevant. Yeretsian argued that the person arrested immediately following the arrest "of the defendant" was a material witness, because he could testify as to the defendant's state of sobriety. Yeretsian added that the report was relevant, "because it will explain or it will show when he was arrested, and it will also prove the fact he was, after all, in the patrol unit and all of that." The court denied the request for production of the report at that time. The court asked Yeretsian if she had a preference for the next hearing date. Yeretsian requested a date in late January 2001. The court set the next hearing for January 31, 2001. Yeretsian waived time to 30 days beyond January 31, 2001.

38. On January 31, 2001, Paul Geragos, a firm partner, appeared with Castaneda in the DUI case. Jauregui was not present. The court ordered release of the name and address of the

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percipient witness to the state of the defendant at the time the incident (arrest) took place. The court also granted the defense request for an order that a sample of blood "taken from the defendant on or about July 15, 2000" be produced for testing. The court set the next hearing for March 2, 2001. Paul Geragos waived time to March 2, 2001 and 30 days thereafter.

39. On March 2, 2001, Paul Geragos appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. Paul Geragos informed the court that the discovery request was almost complete. Paul Geragos requested a continuance. The court set the pre-trial hearing for March 22, 2001 and the trial for April 16, 2001. Paul Geragos waived time.

40. On March 22, 2001, an associate with the law firm, Matthew Geragos, appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. Matthew Geragos informed the court that an audio tape and booking photograph had not been produced in discovery. Matthew Geragos requested that the April 16, 2001 trial be converted to another pre-trial hearing. The court denied his request.

41. On April 16, 2001, Paul Geragos appeared with Castaneda in the DUI case. Jauregui was not present. Paul Geragos informed the court that a discovery request for a cassette tape was pending. The prosecutor stated that she had a copy of the cassette, but the booking photograph was still missing. The court continued the hearing to May 7, 2001. Paul Geragos waived time.

42. On May 7, 2001, Respondent received the booking photograph taken of Jauregui on the night of his arrest from the prosecution in the DUI case in open court, without Castaneda or Jauregui present, but did not reveal to the court that the prosecution had named the wrong person as the defendant.

43. On May 29, 2001, at Respondent's instruction, Yeretsian appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. Yeretsian announced that the defense was ready for trial but requested that the case be trailed to June 5, 2001. Respondent was handling the case, but he was in Sacramento on a federal matter that day. The court trailed the DUI case to June 4, 2001.

44. On June 4, 2001, Paul Geragos appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. Paul Geragos stated to the court that both parties needed additional time, according to notes that he read in the file. The court indicated that Respondent was not available until after June 18, 2001. Paul Geragos requested that the hearing be continued to June 25, 2001 and waived time.

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45. On June 25, 2001, Yeretsian appeared with Castaneda in the DUI case. Jauregui was not present. The court continued the case to July 9, 2001 due to "time constraints." Yeretsian waived time and agreed that if the arresting officer was on vacation on July 9, 2001, she would stipulate to a continuance.

46. On July 3, 2001, Respondent filed a motion to continue the July 9, 2001 trial in the DUI case because he was engaged in trial in another matter.

47. On July 9, 2001, Yeretsian appeared on behalf of the defendant in the DUI case. Neither Castaneda nor Jauregui was present. The court granted the request for continuance that was filed by Respondent on the grounds that he was in trial on another matter. The court stated that there would be no more continuances. The court granted a two-week continuance. Yeretsian waived time to July 24, 2001.

48. Respondent instructed Yeretsian to make an appearance on behalf of the defendant in the DUI case on July 24, 2001, inform the court that the prosecution had erroneously filed charges against Castaneda, and request a dismissal of the charges. Yeretsian appeared with Castaneda in the DUI case as instructed. Jauregui was not present. During an in-chambers conference, the court was provided a booking photograph which showed that Castaneda was not the person arrested. Yeretsian requested a dismissal, but the court declined the request. The court issued a wrong-person certificate to Castaneda. Yeretsian requested a continuance to July 31, 2001. The court continued the matter to August 3, 2001.

49. Shortly thereafter, Jauregui's true identity was discovered by the District Attorney's office through an examination of his fingerprints.

50. On August 3, 2001, the DUI case was called for further proceedings. No one appeared on behalf of the defendant. The prosecution amended the complaint in the DUI case to allege the true name of the defendant to be "Christopher Paul Jauregui" and requested that an arrest warrant be issued as to Jauregui. The court issued a bench warrant for Jauregui.

51. After the complaint in the DUI case was amended to name Jauregui, Respondent referred Jauregui to attorney Gregory Brenner, who undertook Jauregui's representation in the DUI case. Neither Respondent nor the law firm remained as attorney for Jauregui in the DUI case at any time thereafter. Subsequently, Jauregui was represented by a succession of attorneys in the DUI case. Neither Respondent nor the law firm represented Castaneda at any time after Castaneda was issued the wrong-person certificate on July 24, 2001.

52. In August 2002, the law firm refunded to Jauregui, through his subsequent counsel, the fees that Jauregui had paid the law firm for the DUI case.

53. At no time before August 3, 2001, did Respondent withdraw or seek to withdraw from his representation of Castaneda and Jauregui in the DUI case. At no time before August 3, 2001 did the law firm withdraw or seek to withdraw from representation of Castaneda and Jauregi in the DUI case.

54. At all times during the pendency of the DUI case until Castaneda was issued a wrong-person certificate and attorney Brenner took over the representation of Jauregui, Respondent was assigned responsibility as the lead attorney on the case. Respondent made the decisions in the case, with supervision as discussed below. When other attorneys with the law firm made court appearances, they were appearing for Respondent and acted in accordance with his instructions.

55. If called to testify, Respondent would testify that during the time he was handling the DUI case, Respondent was supervised by law firm partner Paul Geragos. Respondent would testify that he discussed his strategy in the DUI case with Paul Geragos, who expressed approval of it.

56. If called to testify, Paul Geragos would testify that:

He was admitted to practice law in California in January 1957. He was a prosecutor in the Los Angeles County District Attorney's Office for approximately 13 years from 1957 until 1970. He then went into private practice as a criminal defense attorney and has spent the remainder of his professional career so engaged. He has tried over 200 cases to a jury as well as innumerable court trials. He is a founding member along with his son, Mark J. Geragos, of the law firm of Geragos & Geragos. Until 2003, the law firm was a partnership with the partners being him and his son. In 2003, the firm became a corporation of which Mark Geragos is the sole shareholder.

During 2000 and 2001, he (Paul) was the partner who primarily supervised the firm's associate attorneys working on criminal cases, including Respondent and Lara Yeretsian. His son, Mark Geragos, was often in trial, and he (Paul) was winding down his trial practice.

He (Paul) has been told that Respondent discussed with him Respondent's strategy for representing both Jauregui and Castaneda in connection with an arrest suffered by Jauregui for driving under the influence. Since December 2001, he (Paul) has had more than one stroke. He does not currently have an independent recollection of such a discussion with Respondent, but his has no reason to doubt that it occurred. When Respondent first began working at the law firm and for several years thereafter, Respondent would discuss cases, legal theories, and strategies with him (Paul) on an almost daily basis. He (Paul) has no doubt that Respondent must have discussed the Jauregui and Castaneda case with him, especially since Respondent has

shown him docket sheets showing that he (Paul) made numerous appearances on the matter in the Alhambra Court.

57. On June 10, 2003, while represented by attorney Sandra Applebaum in the DUI case, Jauregui pled no contest to one misdemeanor count of driving with a blood alcohol level in excess of 0.08 percent in violation of Vehicle Code section 23152(b). The court accepted Jauregui's plea, convicted Jauregui of one misdemeanor count of violating Vehicle Code section 23152(b), and dismissed the remaining two counts. On June 10, 2003, the court in the DUI case suspended imposition of sentence and placed Jauregui on formal probation for a period of three years on certain conditions including, *inter alia*: payment of fines, penalties and restitution totaling \$1,189.00; enrollment and participation in and successful completion of a three-month licensed first-offender alcohol and other drug education and counseling program; and restriction of driving for 90 days to to and from work and to and from the drug education and counseling program.

58. After the wrong-person certificate had been issued to him in the DUI case, Castaneda contacted the CHP on September 20, 2001 to obtain a letter from the CHP to provide to the DMV to clear his driving record and get his driver's license reinstated. On September 24, 2001, Castaneda went to the East Los Angeles CHP office to get the clearance letter. He met with a CHP officer Connie Guzman, who interviewed Castaneda. Castaneda told Officer Guzman that he had obtained a judicial clearance in the DUI matter. The officer pulled the original arrest report and obtained the booking photo of Jauregui. When Officer Guzman showed the booking photo of Jauregui to Castaneda and asked Castaneda if he knew the person in the photo, Castaneda stated that he did not personally know the person, but that he rented a room from his grandmother. Castaneda told the Officer Guzman that he had not given anyone permission to use his information or his California driver's license. As a result, Officer Guzman issued Castaneda a letter of clearance so that the DMV would set aside his suspension.

59. On September 24, 2001, Officer Guzman went to the Alhambra courthouse and spoke to the Deputy District Attorney handling the DUI case, who informed Officer Guzman that both Castaneda and his attorney knew the true identity of the suspect, but did not reveal that to the court. Officer Guzman then re-contacted Castaneda and informed him that she was aware that he did know the defendant in the DUI case and that he had provided her with false information, therefore hindering her investigation of false personation. She requested Castaneda to return to the CHP office for a re-interview.

60. On October 5, 2001, Castaneda returned to the CHP office and admitted to Officer Guzman that he had been untruthful with her. He admitted that he and Jauregui were longtime friends. Castaneda claimed that Jauregui had told Castaneda about two weeks after his arrest that he had given Castaneda's name and information to the arresting officer. Castaneda claimed that he had never given Jauregui permission to use his driver's license number or information.

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Attachment Page 11

Castaneda claimed that he had remained silent before the court in the DUI case because of the friendship he shared with the Jauregui family and the direction he was given by Jauregui's attorney. Castaneda stated that he was no longer willing to accept responsibility for Jauregui's actions on the night of July 15, 2000. At no time during this second interview did Castaneda tell Officer Guzman that he was in the car with Jauregui when Jauregui was arrested on July 15, 2000.

61. In December 2001, the Los Angeles County District Attorney Justice System Integrity Division opened an investigation into what had transpired in the DUI case. Jauregui and Castaneda signed waivers of the attorney-client privilege. Respondent and other attorneys with the law firm cooperated with the investigation. Included in the investigation was a review of whether, in the DUI case, Respondent had committed the crimes of dissuading a witness in violation of Penal Code section 136.1 and concealing a crime in violation of Penal Code section 153. On May 31, 2002, the Los Angeles County District Attorney Justice System Integrity Division issued its report in which it concluded that there was insufficient evidence to prove that Respondent violated either Penal Code section 136.1 or Penal Code section 153 or that he had committed any other crime, and therefore the office declined to initiate a criminal proceeding against Respondent. In the report, the Los Angeles County District Attorney Justice System Integrity Division specifically made no determination as to the propriety of Respondent's conduct under State Bar rules.

62. On August 1, 2002, the Los Angeles County District Attorney filed a complaint against Jauregui and Castaneda in the matter entitled *People v. Christopher Paul Jauregui and Cesar Humberto Castaneda*, Los Angeles County Superior Court case number GA050385 (the "conspiracy case"). The complaint charged Jauregui with one felony count of conspiracy to obstruct justice in violation of Penal Code section 182(a)(5), one felony count of false personation in violation of Penal Code section 529, and one felony count of dissuading a witness from reporting a crime in violation of Penal Code section 136.1(b)(1). The complaint charged Castaneda with one felony count of conspiracy to obstruct justice in violation of Penal Code section 182(a)(5) and one felony count of compounding a non-capital felony in violation of Penal Code section 153.

63. A preliminary hearing was held in the conspiracy case on April 15, 2003, May 27, 2003 and May 28, 2003. At the conclusion of the preliminary hearing in the conspiracy case, but before the court made its ruling, the District Attorney offered Castaneda a plea to one misdemeanor count of conspiracy to obstruct justice. On May 28, 2003, Castaneda pled no contest pursuant to *People v. West* to one misdemeanor count of conspiracy to obstruct justice in violation of Penal Code section 182(a)(5). The court accepted Castaneda's plea, convicted him of the one misdemeanor count of conspiracy to obstruct justice, and dismissed the remaining count against him. The court suspended imposition of the sentence and placed Castaneda on

summary probation for a period of 36 months on certain conditions including 50 hours of community service and payment of a restitution fine in the amount of \$100.

64. At the conclusion of the preliminary hearing in the conspiracy case, the court found that the prosecution had presented sufficient evidence to hold Jauregui over on the charges of conspiracy to obstruct justice in violation of Penal Code section 182(5) and false personation in violation of Penal Code section 529. Pursuant to a Penal Code section 17(B)(5) motion, the court reduced the felony conspiracy to obstruct justice and false personation charges against Jauregui to misdemeanors. The court found that the prosecution presented insufficient evidence as to the count of dissuading a witness from reporting a crime and dismissed that count as to Jauregui.

65. On June 10, 2003, in the conspiracy case, Jauregui pled no contest pursuant to *People v. West* to one misdemeanor count of conspiracy to obstruct justice in violation of Penal Code section 182(a)(5). The court accepted Jauregui's plea, convicted him of the one misdemeanor count of conspiracy to obstruct justice, and dismissed the remaining count against him. The court suspended imposition of sentence and placed Jauregui on formal probation for three years on certain conditions including six months in Los Angeles County jail and payment of a restitution fine in the amount of \$100.

Conclusions of Law - Case No. 03-O-02281

66. **Count One** - By the foregoing conduct, Respondent wilfully violated rule 3-310(C)(2) of the Rules of Professional Conduct.

67. **Count Three** - By the foregoing conduct, Respondent wilfully violated Business and Professions Code section 6068(d).

68. **Count Five** - By the foregoing conduct, Respondent wilfully violated rule 3-210 of the Rules of Professional Conduct.

69. **Count Seven** - By the foregoing conduct, Respondent wilfully violated rule 3-700(B)(2) of the Rules of Professional Conduct.

Facts - Case No. 05-O-03101

70. On June 11, 2004, Glen Sims ("Sims") and Cheri Kinch ("Kinch") employed Respondent, of the Geragos & Geragos law firm, to defend them against potential criminal prosecution for violations of the Insurance Code and Business and Professions Code.

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71. At Respondent's request, Sims and Kinch advanced \$15,000 to Respondent as fees, but Respondent did not provide them with a written fee agreement. Kinch sent a letter to Respondent dated June 11, 2004 with which she enclosed a check for the \$15,000 in advanced fees. In the letter, Kinch requested that Respondent start whatever investigation he believed was necessary to better advise them about their matter. Kinch also stated in the letter that she and Sims would be gone until June 21, 2004.

72. Sims and Kinch received billing statements from Respondent dated June 30, 2004, October 31, 2004, November 30, 2004, January 26, 2005 and January 31, 2005 showing a credit of \$15,000. None of the statements reflected any work performed by Respondent for Sims and Kinch.

73. On February 25, 2005, Sims sent a letter to Respondent on behalf of himself and Kinch, in which he terminated Respondent's employment and requested a refund of the fees paid. Respondent received the letter.

74. In response to Sims's February 25, 2005 letter, Respondent asked Sims to forward a copy of the written fee agreement which Respondent claimed had been sent to Sims and Kinch.

75. On March 24, 2005, Sims spoke with Respondent about his refund request, and Respondent told Sims that he would get right back to him and take care of the matter.

76. On April 8, 2005, Sims made another verbal request to Respondent for the refund.

77. Having received no refund from Respondent, on April 11, 2005, Sims sent another letter to Respondent on behalf of himself and Kinch. In the letter, Sims denied that he and Kinch ever received a written fee agreement from Respondent and referenced the discussion that took place between Respondent and Sims on March 24, 2005 regarding the refund. Sims again requested that Respondent provide the refund immediately. Respondent received the letter.

78. On April 21, 2005, Sims spoke with Respondent's receptionist about his request for a refund. The receptionist informed Sims that she would get right on the issue and forward his request to Mr. Geragos.

79. During the first week of May 2005, Sims spoke with Respondent about his request for a refund. Respondent informed Sims that he would refund some, but not all, of the \$15,000, because he claimed to have performed some work on the case.

80. Having received no refund from Respondent nor proof of any services performed in the matter, Sims submitted a complaint to the State Bar of California ("State Bar"), received on May 24, 2005, regarding Respondent's failure to provide the requested refund.

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81. On June 14, 2005, the State Bar sent a letter to Respondent regarding Sims's complaint.

82. On June 14, 2005, before he ever received any contact from the State Bar regarding the Sims matter, Respondent sent Sims a letter explaining his position. With the letter, Respondent enclosed a check dated June 13, 2005 in the amount of \$13,170 made payable to Sims and an accounting which reflected that legal research had been conducted in June 2004 regarding the matter.

83. On June 28, 2005, Respondent sent a letter and enclosures to the State Bar in response to the State Bar's June 14, 2005 letter regarding Sims's complaint.

84. Sims took issue with Respondent's claim that the work reflected in the accounting provided by Respondent had been performed and denied that any fee had been earned as Respondent had never previously communicated that the research had been performed and never provided any documentation evidencing the research performed.

85. On August 5, 2005, Respondent provided a refund for the remaining balance of \$1,830 to Sims.

86. Were he called to testify, Respondent would testify as follows:

The work that was finally reflected on the firm's billing was not shown on previous statements to Sims/Kinch because of an office procedure in effect at the time. Once a retainer was signed, it would be provided to the law firm's billing department, and at that point, the work would be shown on monthly statements.

However, there was no retainer for Sims/Kinch, because at the time the clients paid the advance fee, it was understood that Respondent would begin research and analysis to assess what needed to be done, and after that, he would be able to more clearly define the scope of employment in a written retainer agreement. The research was performed, but the clients did not get back to Respondent until Sims' letter of February 25, 2005, about eight months later. It was when Respondent was preparing to provide a refund that he realized that there had been no written retainer, and he directed that the statement of account show the work that had been performed. The law firm now has a different practice that avoids the error made in the Sims/Kinch billing.

After Sims requested a full refund, Respondent and Sims met in person to discuss the matter. Respondent fully described the work to Sims. There was also telephone contact between them on at least two occasions dealing with the same fee dispute.

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87. On August 25, 2005, counsel for Respondent sent a letter to the State Bar regarding the Sims complaint. The letter essentially described the facts set forth in paragraph 86.

Conclusions of Law - Case No. 05-O-03101

88. **Count Eight** - By the foregoing conduct, Respondent wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was November 20, 2007.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-02281	Two	Rule of Professional Conduct 3-310(E) (Conflict - Representation Adverse to Client)
03-O-02281	Four	Rule of Professional Conduct 3-110(A) (Failure to Perform Legal Services Competently)
03-O-02281	Six	Business and Professions Code section 6106 (Moral Turpitude)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 5, 2007, the costs in this matter are \$5,864.49. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

The determination of discipline begins “by looking to the purpose of sanctions for attorney misconduct.” (*In re Morse* (1995) 11 Cal.4th 184, 205.) “The primary purposes of disciplinary proceedings . . . are the protection of the public, the courts[,] and the legal

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profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession.” (Std. 1.3.)

The standards provide guidance and deserve "great weight." (*In re Silverton* (2005) 36 Cal.4th 81, 92; *In re Morse, supra*, 11 Cal.4th at p. 205; *In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence 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, supra*, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from

application of the standards unless it has "grave doubts" about the recommendation's propriety. (*In re Morse, supra*, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

In this matter, Respondent violated rules 3-210, 3-310(C)(2), 3-700(B)(2), and 3-700(D)(2) of the Rules of Professional Conduct and section 6068(d) of the Business and Professions Code.

Standard 2.6(a) provides that culpability of a member of violating Business and Professions Code section 6068 (including 6068(d)) shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, with due regard for the purposes of imposing discipline set forth in standard 1.3.

Standard 2.10 provides that culpability of a member of wilfully violating any Rule of Professional Conduct not specified in the standards (including rules 3-210, 3-310(C)(2), 3-700(B)(2) and 3-700(D)(2)) shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

The stipulated discipline herein comports with the standards and will serve the purposes of protecting the public, the courts and the profession, maintaining high professional standards and preserving public trust in the legal profession.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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In the Matter of Shepard Sanford Kopp	Case number(s): 03-O-02281 - RAH and 05-O-03101
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SIGNATURE OF THE PARTIES

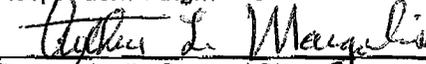
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

11-14-07
Date


Respondent's Signature

Shepard S. Kopp
Print Name

11/25/07
Date


Respondent's Counsel Signature

Arthur L. Margolis
Print Name

11/27/07
Date


Deputy Trial Counsel's Signature

Kristin L. Ritsema
Print Name

(Do not write above this line.)

In the Matter Of
Shepard Sanford Kopp

Case Number(s):
03-O-02281 - RAH and 05-O-03101

ORDER

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

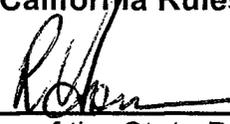
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See 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 9.18(a), California Rules of Court.)**

Date

11/29/07

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 of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 3, 2007, 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:

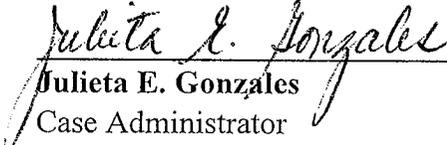
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ARTHUR L MARGOLIS ESQ
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

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

Kristin L. Ritsema, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 3, 2007**.



Julieta E. Gonzales
Case Administrator
State Bar Court