



PUBLIC MATTER

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~~SEP 14 2007~~

State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar CHARLES A. MURRAY Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1236 Bar # 146069	Case Number(s) 04-N-10859; 04-O-14438; 05-O-01845 (Inv.)	(for Court use) <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center;">JAN 26 2008</div> <div style="text-align: center; font-size: 0.8em;"> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per DAVID A. CLARE 4675 MacARTHUR CT., SUITE 1250 NEWPORT BEACH, CALIFORNIA 92660 (949) 417-5640 Bar # 44971	<div style="text-align: center; font-size: 1.5em; opacity: 0.5;">RECEIVED</div> <div style="text-align: center;">JAN 05 2007</div> <div style="text-align: center; font-size: 0.8em; opacity: 0.5;"> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In the Matter of MARLENE GERDTS Bar # 93815 A Member of the State Bar of California (Respondent)	Submitted to Program Judge <div style="text-align: center; font-weight: bold;">STIPULATION RE FACTS AND CONCLUSIONS OF LAW</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 16, 1980 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See Attachment.
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law." See Attachment.

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- (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 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [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)] - see page 9 and 10.
- (a) ☒ State Bar Court Case # of prior case S118399 (99-O-12936, consolidated with 99-O-13583 and 99-O-13586)
- (b) ☒ Date prior discipline effective 1/22/04
- (c) ☒ Rules of Professional Conduct/State Bar Action violations RPC 3-700(D)(2); 3-110(A); and 4-100(a); B&P 6068(m) and 6106
- (d) ☒ Degree of prior discipline Three (3) years Suspension Stayed; Four (4) years Probation w/ Conditions, Two (2) years Actual; Restitution, Rehabilitation, MPRE, Rule 955
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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. (see page 10)
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing ~~or demonstrates a pattern of misconduct.~~ (see page 10)
- (8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

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C. Mitigating Circumstances [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. (see page 10)
- (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. (see page 10)
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. (see page 10)
- (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. (see page 11)
- (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. (See page 11)
- (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. (see page 11)
- (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:

ATTACHMENT TO
ADP STIPULATION RE FACTS & CONCLUSIONS OF LAW

IN THE MATTER OF: **MARLENE GERDTS, State Bar No. 93815**

CASE NUMBERS: 04-N-10859; 04-O-14438 and Inv. matter 05-O-01845

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was December 15, 2006.

PARTIES ARE BOUND BY THE STIPULATED FACTS:

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected, modified or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct, or that she has otherwise committed acts of misconduct warranting discipline, as follows:

PRELIMINARY FACTS:

1. On December 23, 2003, the California Supreme Court filed Order No. S118399 ("Suspension Order") requiring that Respondent comply with California Rules of Court, rule 955, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Suspension Order. The Suspension Order became effective on January 22, 2004, thirty days after the Suspension Order was filed.
2. On December 23, 2003, the Clerk of the California Supreme Court properly served a copy of the Suspension Order upon Respondent.
3. The Suspension Order required that Respondent comply with subdivision (a) of rule 955 of the California Rules of Court no later than February 21, 2004, by, among other things, notifying all clients and any co-counsel of her suspension - and in the absence of co-counsel, also notifying the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney; delivering to all clients any papers or other property to which the clients are entitled; refunding any unearned attorney fees; notifying opposing counsel and adverse parties of her suspension, and filing a copy of said notice with the court, agency, or tribunal before which the litigation is pending.
4. The Suspension Order required that Respondent comply with subdivision (c) of rule 955 of the California Rules of Court no later than March 2, 2004, by filing with the Clerk of the State Bar Court an affidavit showing that she fully complied with those provisions of the Suspension Order regarding rule 955.
5. On January 9, 2004, a probation deputy of the Office of Probation of the State Bar of California ("Office of Probation") wrote a letter to Respondent reminding Respondent of the obligation to comply with rule 955 and enclosing an accurate copy of the Suspension Order as well as a form approved by the State Bar Court Executive Committee for reporting compliance with rule

955. On that same date, the probation deputy mailed the letter and enclosures by placing the documents in a sealed envelope addressed to Respondent at her State Bar membership records address, 433 North Camden Drive, 6th Floor, Beverly Hills, CA 90210. The envelope was properly mailed by first-class mail, postage pre-paid, by depositing it for collection by the United States Postal Service in the ordinary course of business on about January 9, 2004. The United States Postal Service did not return the mailing as undeliverable or for any other reason. Respondent received the mailing.

6. Respondent did not file, with the Clerk of the State Bar Court, a declaration stating compliance with rule 955 (955 Declaration) by March 2, 2004. On September 22, 2004, the Respondent attempted to file a 955 Declaration but it was rejected because it contained the wrong case number.

7. On October 19, 2004, Respondent filed a new affidavit with the Clerk of the State Bar Court in compliance with rule 955, which was approved for filing only by the Office of Probation on October 22, 2004.

Case No. 04-O-14438 [CW: Morales]

FACTS:

8. The **PRELIMINARY FACTS** set forth above are incorporated by this reference.

9. In about May 2003, Carmen Morales (Morales) hired Respondent to represent her son, Mauricio Morales (Mauricio) in a criminal appeal. At the time, Mauricio was incarcerated.

10. Morales agreed to pay Respondent \$30,000 for her legal services.

11. On May 19, 2003, Morales paid \$10,000 to Respondent as partial payment of her advance attorney's fees.

12. On May 23, 2003, Respondent and Morales executed a retainer agreement for the above-described representation of Mauricio.

13. On June 3, 2003, Respondent filed a Notice of Appeal on Mauricio's behalf in Los Angeles Superior Court, *People v. Morales*, case no. B167850. Mauricio's opening brief was due in the Court of Appeals on August 6, 2003.

14. On July 3, 2003, Respondent and Morales agreed to modify the retainer agreement by incorporating a payment schedule providing for Morales to pay Respondent \$3,000 every two months until the \$30,000 was paid in full. Morales made a \$3,000 payment for July 2003.

15. Subsequently, Morales moved to Missouri. Respondent instructed Morales to deposit the next scheduled payments into Respondent's bank account at Western Financial Bank. Morales continued to make payments [\$3,000 for September 2003; \$3,000 for November 2003].

16. In preparation for this appellate brief, Respondent reviewed the criminal file, interviewed witnesses, and researched various issues.

17. Respondent did not file Mauricio's opening brief by August 6, 2003. Instead, on or about August 6, 2003, Respondent filed an Application for Extension of Time to file Mauricio's Opening Brief. The Court of Appeals granted the request, and gave Respondent until September 26, 2003, to file Mauricio's opening brief.

18. Respondent did not file Mauricio's Opening Brief by September 26, 2003. The Court of Appeals served notice that Mauricio's appeal would be dismissed if the Opening Brief was not

filed by December 15, 2003. On December 12, 2003, she applied for a further extension of time to file Mauricio's Opening Brief but that the application was denied.

19. In January 2004, Respondent spoke with Morales by telephone. Morales asked Respondent about the status of Mauricio's appeal. Respondent did not tell Morales that she had not filed the Opening Brief in Mauricio's appeal. Respondent told Morales that she was waiting for some documents and that the case would be reopened shortly.

20. On January 21, 2004, the Court of Appeal dismissed Mauricio's appeal due to Respondent's failure to file the Opening Brief or otherwise prosecute the appeal.

21. On January 21, 2004, the Court of Appeal served a copy of the dismissal upon Respondent.

22. On January 22, 2004, Respondent was suspended from the practice of law by the December 23, 2003 Supreme Court Suspension Order.

23. On or about February 25, 2004, Morales wired another \$3,000 into Respondent's bank account pursuant to the fee agreement. This brought the total that Morales had paid to Respondent to \$22,000. Respondent did not inform Morales or Mauricio before this payment was made that she was suspended or that the appeal had been dismissed.

24. Respondent did not notify Morales or Mauricio by February 21, 2004, that she had been suspended from the practice of law by the December 23, 2003 Supreme Court Suspension Order.

25. On September 22, 2004, Respondent mailed a Rule 955 Compliance Declaration (955 Declaration) to the California State Bar, Office of Probation. Respondent signed the 955 Declaration under penalty of perjury on September 9, 2004.

Section 1 of Respondent's 955 Declaration stated that she had notified all of her clients by certified or registered mail of her suspension from the practice of law within thirty days of the effective date of the Order of Suspension..

Section 2 of Respondent's 955 Declaration stated that she had returned all of her client's files by January 22, 2004.

Section 3 of Respondent's 955 Declaration stated that she had earned all of the fees that her clients' had paid to her.

26. On September 23, 2004, Respondent mailed a letter to Morales, along with Mauricio's file, stating that she was returning the file because she had been suspended from the practice of law.

27. Respondent had not previously told Mauricio or Morales that she had been suspended from the practice of law.

28. On September 23, 2004, Respondent mailed a second letter to Morales, stating that she had received \$22,000 from Morales to represent Mauricio and that she was unable to complete Mauricio's appeal. Respondent did not inform Morales or Mauricio that she had not filed the Opening Brief or that the Court of Appeal had dismissed his appeal because Respondent had not filed the Opening Brief. Respondent promised to repay the entire \$22,000 to Mauricio by February 15, 2005. Respondent admits that she did not perform the legal services for which she was retained and did not earn the fees paid.

29. From November 2003 and in numerous times thereafter, Morales called Respondent's office to obtain information regarding the status of the appeal. Morales was usually told that

Respondent was busy or in court. Morales routinely left messages asking for the status of Mauricio's case and asking Respondent to return her calls. Respondent responded to only a few but not most of the calls she reasonably should have and she did not inform Morales or Mauricio of the true status of the appeal.

30. On March 7, 2004, and May 10, 2004, Mauricio wrote letters to Respondent asking about the status of his appeal. Respondent failed to respond to Mauricio's letters.

31. After Mauricio found out that his case had been dismissed and that Respondent was not representing him anymore, he filed a writ of *habeas corpus* on August 18, 2004. The court deemed the writ to be a motion to vacate the dismissal and reinstate the appeal. The Court granted that motion, reinstated the appeal, and appoint counsel for Mauricio.

32. To date, Respondent has not refunded any of the \$22,000 in fees she received from Morales but did not earn.

CONCLUSIONS OF LAW:

33. By failing to timely file the opening brief in Mauricio's appeal within the originally scheduled time, by failing to file the Opening Brief within the extended time, by failing to inform the Court why no Opening Brief had been filed, and by failing to file any pleading regarding the dismissal of the appeal, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of the Rules of Professional Conduct, rule 3-110(A).

34. By not promptly responding to her client's inquiries and by not informing Morales or Mauricio that she had not filed the Opening Brief and that the Court of Appeal had dismissed his appeal, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

35. By not telling Morales or Mauricio that Mauricio's appeal had been dismissed and that she was suspended from the practice of law and would not do further work on his matter, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

36. By failing to refund to Morales the \$22,000 advanced fees, which Respondent did not earn, Respondent wilfully failed to refund unearned fees to her client in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Investigation Matter 05-O-01845 [CW: Abrego]

FACTS:

37. The **PRELIMINARY FACTS** set forth above are incorporated by this reference.

38. On May 25, 2003, Maria Abrego ("Abrego") hired Respondent to represent her in a dissolution of marriage action (the "Abrego matter"). Abrego and Respondent entered into a retainer agreement prepared by Respondent, the terms of which included, among others, that Respondent would take the necessary steps that are reasonable in representing Abrego's rights in the dissolution of marriage; that Respondent would be paid the fixed sum of \$20,000 instead of charging an hourly fee because if the attorney were to charge her hourly fee of \$300, Abrego would not be able to pay for the services; and that Abrego would pay expenses in advance. Abrego paid Respondent the agreed upon \$20,000 fixed fee.

39. Respondent actively performed legal work on behalf of Abrego up to January 22, 2004, the day before the effective date of her suspension from the practice of law pursuant to the December 23, 2003 Supreme Court Suspension Order, including without limitation in the week before her suspension, according to Respondent's billing statement to Abrego: five hours of preparation for deposition on January 14, 2004, and six hours for the taking of a deposition by Respondent of the opposing party on January 15, 2004; and four telephone calls with the client for unspecified periods of time on January 14, 15, 20, and 21, 2004. In none of those contacts did Respondent inform Abrego of the December 23, 2003 Supreme Court Suspension Order that would suspend her from the practice of law effective January 22, 2004.

40. On January 22, 2004, Respondent orally informed Abrego for the first time of her suspension. In a letter to Abrego dated January 28, 2004, sent by certified mail, Respondent informed Abrego, among other things, that she had been suspended from the practice of law.

41. Upon this termination of legal services Abrego demanded, as the return of unearned fees, a portion of the \$20,000 fixed fee she had paid to Respondent to complete her divorce. Abrego and Respondent dispute the amount of fees that were demanded. Abrego claims she demanded the return of \$10,000. Respondent denies this and claims that Abrego demanded the return of \$5000. The parties agree that Respondent offered to return \$5000 to Abrego if Abrego agreed to accept an unspecified installment payment plan as Respondent did not have any money available. Abrego did not accept this offer. Respondent did not return any fees to Abrego. On January 28, 2004, Respondent sent Abrego a billing statement dated January 21, 2004 in which Respondent stated \$30,067 in charges to Abrego in the Abrego matter. The parties continue to dispute the amount of fees, if any, that should be returned.

42. On February 23, 2004, Respondent submitted under seal to the Family Law court with jurisdiction over the Abrego matter a pleading entitled Notice re Petitioner's Representation by Counsel. In that pleading Respondent stated in a declaration dated February 23, 2004, among other things, that she was suspended from the practice of law as of January 22, 2004; that she had not given notice to the other parties; that the substitution of counsel required by the suspension was a matter between the court, Respondent and Abrego; and, that there was no purpose or need to notice the other parties as it would weaken the position of Abrego vis a vis the other parties. Respondent did not serve this pleading on opposing counsel.

43. Respondent later acknowledged to opposing counsel in the Abrego matter in a telephone conversation that she had been suspended from the practice of law but Respondent did not notify opposing counsel in writing or by certified mail of her suspension.

CONCLUSIONS OF LAW:

44. By not informing Abrego of her upcoming suspension when Respondent was served with the Suspension Order, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

RULE 955 Violations:

FACTS:

45. The **PRELIMINARY FACTS**, the **FACTS** in Case No 04-O-14438 and the **FACTS** in Case No. 05-O-01845, all set forth in full above, are incorporated by this reference.

CONCLUSIONS OF LAW:

Case No. 04-N-10859;
Case No. 04-O-14438 [CW: Morales]
Investigation Matter 05-O-01845 [CW: Abrego]

46. By failing to file the rule 955 Declaration that was due March 2, 2004 with the Clerk of the State Bar Court until October 22, 2004; by failing to inform Morales or Mauricio of her suspension until September 23, 2004; by failing to return the client file in the Morales matter until September 23, 2004; and, by failing to refund the unearned fees in the Morales matter; by failing to notify opposing counsel in the Abrego matter of her suspension, and then file a copy of that notice with the court in the Abrego matter, as required by the Suspension Order; Respondent wilfully violated Business and Professions Code, section 6103, which required her to obey an order of the court requiring her to do an act connected with her profession which she ought in good faith to do.

Case No. 04-O-14438 [CW: Morales]
Investigation Matter 05-O-01845 [CW: Abrego]

47. By stating on her Rule 955 Declaration, under penalty of perjury, that within 30 days of the effective date of the order of suspension [prior to February 21, 2004], Respondent had:

- notified all clients by certified or registered mail about her suspension from the practice of law, when in fact she had not done so in the Morales matter;
- notified opposing counsel about her suspension and filed a copy of said notice with the court before which litigation was pending, when she had not done so in the Abrego matter;
- returned all client files and urged said clients to seek legal advice elsewhere, calling attention to the urgency of seeking another attorney, when in fact she had not done so in the Morales matter; and,
- earned all fees, when in fact she had not earned the \$22,000 in fees in the Morales matter;

Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code, section 6106.

Aggravating Circumstances:

B.(1) Prior Record of Discipline:

Effective January 22, 2004, the Supreme Court [case no. S118399; State Bar case nos. 99-O-12936, consolidated with 99-O-13583 and 99-O-13586] ordered Respondent suspended for three years, stayed, with probation for four years on conditions that included actual suspension for two years and until she makes restitution as stated in that order and until she provides proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and learning and ability in the general law in accordance with standard 1.4(c)(ii). She was also ordered to take and pass the MPRE during the period of her actual suspension and comply with the provisions of rule 955 of the California Rules of Court and to perform the acts specified in subsections (a) and (c) within 30 and 40 calendar days, respectively.

This discipline was based upon findings that: in one matter, Respondent violated rule 3-700(D)(2) of the Rules of Professional Conduct for failure to promptly refund unearned fees upon termination of employment; in a second matter, Respondent violated rule 3-110(A) for repeated and reckless failure to competently perform legal services, violated Business and Professions Code section 6068(m) for failure to respond promptly to reasonable status inquiries of the client and to keep the client informed of significant developments, and was culpable of

conduct involving moral turpitude in violation of section 6106 for failing to disclose to her client that her case had been dismissed and concealing matters about her trust account in a judgement debtor's examination and concealed assets under the trust account label; and in a third matter, Respondent violated rule 4-100(A) by using her trust account for personal and business purposes and by commingling her funds with those of her clients, was culpable of conduct involving moral turpitude in violation of section 6106 for issuing five NSF checks on her trust account as a result of gross negligence in managing the account and a second violation of section 6106 for using one of her trust accounts to secrete more than \$54,000 from her creditors and using a second trust account to secrete more than \$79,000 from her creditors.

B.(4) Harm

Client Morales was denied a timely criminal appeal regarding his conviction, he was not told his appeal had been dismissed due to Respondent's inaction, and his attorney fees of \$22,000 were not returned affecting his ability to hire new counsel to represent him in this matter.

Client Abrego was suddenly left without legal representation in the middle of active and ongoing divorce negotiations and with no funds to retain another attorney to represent her due to a dispute between her and Respondent regarding the amount of fees that should have been returned upon termination.

B.(7) Multiple Acts of Wrongdoing:

The numerous violations in the current matters as set forth above evidence multiple acts of wrongdoing.

Mitigating Circumstances:

C.(3) Candor and Cooperation:

Respondent displayed candor and cooperation to the State Bar during the disciplinary investigation and these proceedings.

C.(4) Remorse:

Respondent has been candid, cooperative and contrite. She has expressed a willingness to accept a lengthy period of monitoring and probation under rigorous conditions recommended by the Court. *Schneider v. State Bar* (1987) 43 Cal.3d 784. Several witnesses have noted her remorse and she has sought professional services to aid in her rehabilitation. *In re Arnoff* (1978) 22 Cal.3d 740. And see, *Bradpiece v. State Bar* 10 Cal.3d 742, 748.

C.(8) Emotional/Physical Difficulties;

From November 15, 2003 through the middle of 2004 Respondent suffered from a series of illnesses and/or physical problems. Through much of the time from November 15, 2003 through the middle of December, 2003, Respondent suffered from a severe bout of influenza that included doctor assistance and prescription medication. Problems with her stomach continued to recur and on March 5, 2004, Respondent was admitted to UCLA Medical Center for symptoms that included vomiting, dehydration, stomach bloating, cramps, and severe abdominal pain. She was there for several days of treatment which included morphine for the severe pain, and for tests which revealed the primary problems as intestinal blockage due to Diverticulitis, and an enlarged thyroid gland.

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C.(9) Financial Stress:

Respondent's continued illness from late 2003 through mid-2004 resulted in financial difficulties from both not being able to earn income and from extraordinary medical expenses. Respondent was unable to pay rent in June 2004, an unlawful detainer was filed against her in July 2004, she was evicted in August 2004, and she filed for bankruptcy protection on August 16, 2004. In October 2004, she lost her job as a loan officer when the branch where she was employed closed.

C.(10) Family problems:

After Respondent was evicted from her home in August 2004, she had to move into an apartment with her daughter who had a history of medical problems including her back (spinal fusion at age 11) and epilepsy with occasional dramatic mood swings controlled by medication. Respondent's brother is diabetic who in September 2004 was hospitalized for surgery related to arterial blockage and coronary by-pass. After July 2004, Respondent's mother, in her late 70's, was hospitalized with conditions that included heart problems, a dislocated shoulder, a hemorrhage in her eye, and severe asthma attacks.

C.(11) Good Character:

Respondent has provided several letters from various sources supporting her good character.

RESTITUTION:

Case No. 04-O-14438 [CW: Morales]

Respondent shall pay to Carmen Morales (or the Client Security Fund, if appropriate) the principal sum of \$22,000, plus interest on that sum at the rate of ten percent (10%) per annum from January 21, 2004.

ADDITIONAL RESTITUTION CONDITION:

Investigation Matter 05-O-01845 [CW: Abrego]

Fee arbitration in Abrego matter:

Respondent hereby agrees to write to Ms. Abrego, within fifteen (15) days from the date she signs an ADP contract regarding these matters, and therein to offer to initiate and participate in State Bar fee arbitration upon Ms. Abrego's request regarding the \$20,000 advanced fees.

Respondent further agrees to abide by the final order in a fee arbitration with Ms. Abrego, if any there be. Respondent understands and agrees that her failure to write the letter, or to initiate or to participate in fee arbitration upon Ms. Abrego's request, or to abide by the final order, if any there be, shall constitute a violation of her disciplinary resolution and/or her ADP participation and be cause for further State Bar action including her unsuccessful termination from the Alternative Discipline Program. Respondent shall provide such proof of compliance with this condition as this court may request.

Respondent waives the expiration of any time to resolve this dispute by fee arbitration.

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(Do not write above this line.)

In the Matter of MARLENE GERDTS Member #: 93815	Case number(s): 04-N-10859; 04-O-14438; 05-O-01845 (Inv.)
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SIGNATURE OF THE PARTIES

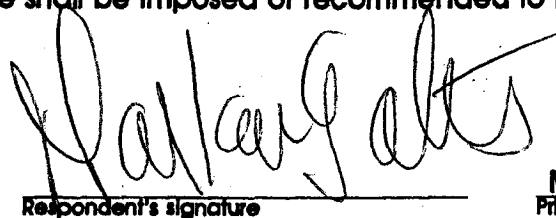
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

12/22/06
Date


Respondent's signature

MARLENE GERDTS
Print name

12/29/06
Date


Respondent's Counsel's signature

DAVID A. CLARE
Print name

1/5/07
Date


Deputy Trial Counsel's signature

CHARLES A. MURRAY
Print name

(Do not write above this line.)

In the Matter of MARLENE GERDTS Member #: 93815	Case number(s): 04-N-10859; 04-O-14438; 05-O-01845 (Inv.)
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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 stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

September 14, 2007
Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 September 17, 2007, I served a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM**

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

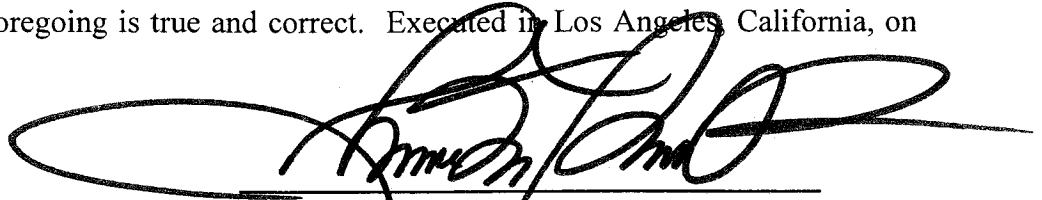
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802**

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 17, 2007.



Johnnie Lee Smith
Case Administrator
State Bar Court