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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar Manuel Jimenez Deputy Trial Counsel State Bar of California 180 Howard Street San Francisco, CA 94105 (415) 244-5305 Bar # 218234	Case number(s) 04-0-10121 PUBLIC MATTER	(for Court's use) FILED <i>LOS</i> AUG 17 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge	
Bar # In the Matter of Gregory A. Brubaker Bar # 163916 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 March 29, 1993
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 18 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) 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.

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(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:
(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 or a separate attachment entitled "Prior Discipline."

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

(3) ☒ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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

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- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☒ **Restitution:** Respondent paid \$ \$25,000 plus \$1,370 on or about 02-04-05
in restitution to Dee Farnow & Carlos Bretao 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.

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- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances:

D. Discipline:

(1) ☐ **Stayed Suspension:**

- (a) ☐ Respondent must be suspended from the practice of law for a period of _____
- 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 three (3) years which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of eighteen (18) months.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☒ and until Respondent pays restitution 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.

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- (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 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended. Reason: _____
- (2) ☒ **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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.
- (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:** _____

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Gregory Brubaker

CASE NUMBER(S): 04-O-14891 et al.

FACTS AND CONCLUSIONS OF LAW.

Gregory Brubaker ("Respondent") was admitted to the practice of law in the State of California on March 29, 1993, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

A. The Ray Durrer Matter

Facts:

On May 13, 2001, respondent filed a motion to withdraw guilty plea on behalf of Ray Durrer ("Durrer") in *People v. Durrer*, Santa Clara Superior Court case number BB050416, Durrer having completed his probation successfully. By order filed July 26, 2001, the court granted the motion, dismissed the matter, and ruled that Durrer was eligible to petition for a certificate of rehabilitation on April 27, 2003. On March 3, 2003, Durrer rehired respondent to obtain the certificate of rehabilitation, which would allow Durrer to avoid the obligation to register as a sex offender. Respondent demanded and Durrer paid respondent \$2,500 to obtain the certificate of rehabilitation. Thereafter, respondent failed to obtain the certificate of rehabilitation and failed to file a petition for a certificate of rehabilitation.

Between March 3, 2003 and April 30, 2003, Durrer left several telephone messages for respondent requesting a status report. Though respondent received the messages, he did not respond in any way. On April 30, 2003, Durrer went to respondent's office and waited for him outside. When respondent met Durrer outside the office building, he told Durrer that the process of obtaining the certificate of rehabilitation was underway and that he would contact Durrer within a week. Thereafter, respondent did not contact Durrer in any way. By letter dated June 9, 2003, Durrer requested a status report. Respondent received this letter, but did not respond in any way.

Respondent's employment by Durrer terminated when respondent failed to perform the services for which he was employed, failed to respond to Durrer's status inquiries, and was notified in February 2004 that Durrer had filed a State Bar complaint against respondent.

Respondent has not earned any substantial portion of the \$2,500.00 fee that he received. To date, respondent failed to return any portion of the \$2,500.00 in attorney fees paid by Durrer.

Conclusions of Law:

By failing to obtain the certificate of rehabilitation and failing to file a petition for a certificate of rehabilitation, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

By failing to respond to Durrer's telephone messages and his letter of June 9, 2003, respondent willfully failed to respond promptly to reasonable status inquiries of a client in violation of Business and Professions code, section 6068(m).

By failing to refund the \$2,500.00, respondent willfully failed to promptly refund a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2).

B. The Dee Farnow Matter

Facts:

On April 1, 2004, Daniel Bretao ("Bretao") hired respondent to represent him in *People v. Bretao*, San Mateo Superior Court case number 331912A. Bretao signed a "Contract for Legal Services," prepared by respondent, in which respondent agreed to represent Bretao for flat "nonrefundable" fee of \$4,000.00. On April 19, 2004, Bretao paid respondent \$4,000.00 by a check drawn on his parents' checking account and signed by his mother. At no time thereafter did respondent demand any further payment from Bretao; nor did respondent earn any further fee; nor was respondent entitled to any further fee or payment of any kind.

Bretao's bail was set at \$25,000.00. On April 19, 2004, Dee Farnow ("Farnow"), the mother of Bretao's girlfriend, paid \$12,500.00 and Mr. and Mrs. Carlos Bretao ("Carlos" and "Michelle"), Bretao's brother and sister-in-law, paid \$12,500.00 to San Mateo County towards Bretao's bail. On June 14, 2004, *People v. Bretao* was dismissed. As of this date, Farnow, Carlos, and Michelle were entitled to a refund of the \$25,000.00.

By warrant 169289, dated June 24, 2004, the County of San Mateo refunded the full \$25,000.00 bail to respondent, Bretao's attorney of record. On June 29, 2004, after endorsing the bail refund check, respondent deposited the funds into Bank of America account number 12095-04221, a non-trust bank account. Thereafter respondent misappropriated the proceeds of the bail refund check for his own use and benefit, including payment of his 2004 State Bar dues and to pay late charges for a check (#2582) which previously had been drawn against insufficient funds.

On July 12, August 23, August 24, and September 17, 2004, Bretao contacted respondent by telephone inquiring whether he had received the bail refund check. Michelle also asked respondent when she could expect her share of the bail refund. On each occasion, respondent denied that he had received the bail refund check, but promised to forward the funds to Farnow, Carlos, and Michelle upon receipt. Respondent's statements were false and misleading because in truth and in fact, as respondent knew, respondent had received the bail refund check and misappropriated the funds. By September 24, 2004, the balance of respondent's non-trust account had fallen to \$299.55. Bretao continued to leave telephone messages for respondent requesting status reports regarding the bail refund. Respondent received these messages, but did not respond in any way.

On October 4, 2004, Farnow contacted respondent by telephone about the refund. Respondent made a false and misleading statement to the effect that respondent had contacted San Mateo County and had been told that the refund would be issued on October 13, 2004. Following her conversation with respondent, Farnow contacted San Mateo County and learned that the bail refund check had been sent to respondent on June 24, 2004. By letter dated October 6, 2004, sent by certified mail, return receipt requested, Farnow advised respondent that she was aware that the bail refund check had already been sent to him. The letter demanded that respondent turn over the bail refund proceeds no later than October 11, 2004. Respondent received the letter, but did not respond.

On October 8, 2004, Bretao went to respondent's law office to attempt to recover the bail refund proceeds on behalf of Farnow, Carlos, and Michelle. Because respondent was not present in his office and had not returned any of Bretao's telephone calls since September 17, 2004, Bretao left a copy of the bail refund check showing its endorsement by respondent and a letter requesting an explanation regarding respondent's retention of the bail refund. This constituted a request for accounting. Respondent received the letter and the copy of the check, but did not respond. To date, respondent has neither responded to Bretao's October 8, 2004 letter or Farnow's October 6, 2004 letter, nor disgorged any part of the bail refund proceeds.

Conclusions of Law:

By misappropriating \$25,000.00 and making false and misleading statements, respondent committed acts involving moral turpitude in violation of Business and Professions Code, section 6106.

By failing to respond to Bretao and Farnow's letters requesting an accounting of the bail refund proceeds and failing to disgorge any part of the bail refund proceeds, respondent has failed to render appropriate accounts to a client regarding all funds coming into respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3).

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PENDING INVESTIGATIONS.

As of July 14, 2005, respondent has no pending investigations/proceedings not resolved by this stipulation necessitating disclosure as required on page one, paragraph A.(7).

FINANCIAL CONDITIONS, RESTITUTION.

Within thirty (30) days from the effective date of discipline in this matter, Respondent must make restitution to Ray Durrer or the Client Security Fund if it has paid, in the amount of \$2,500 plus 10% per annum from March 3, 2003 and furnish satisfactory evidence of restitution to the Probation Unit.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 18, 2005, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards:

Standards for Attorney Sanctions for Professional Misconduct ("the standards"):

In determining the appropriate level of discipline, the court should look to the Standards for Professional Misconduct. In *In re Morse* (1995) 11 Cal. 4th 184, 206, the California Supreme Court stated:

"To determine the appropriate level of discipline...we...must first look to the standards for guidance. These guidelines are not binding on us, but they promote the consistent and uniform application of disciplinary measures. Hence we have said that 'we will not reject a recommendation arising from application of the standards unless we have grave doubts as to the propriety of the recommended discipline.(Citation omitted.)'"

Standard 1.3 provides that the primary purposes of attorney discipline are "the protection of the public, the courts and the legal profession, the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Despite the need to examine cases on an individual basis, it is also a goal of disciplinary proceedings that there be consistent recommendations as to discipline, a goal that has been largely achieved through the application of the Standards of Attorney Sanctions for Professional Misconduct (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291).

Standard 2.2(a) provides that culpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b) provides that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client, or another person shall result in actual suspension or disbarment depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it related to the member's acts within the practice of law.

Standard 2.4(a) provides that a member's pattern of willful failure to perform services demonstrating abandonment of the causes in which he was retained shall result in disbarment.

Standard 2.4(b) provides that culpability of a member of a pattern of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of a member of a violation of section 6068 of the Business and Professions Code shall result in disbarment or suspension depending on 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.

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards 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.

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Case Law:

The Court should also look at case authority in determining the appropriate level of discipline to determine whether the discipline is consistent or disproportional to prior decisions on the same set of facts. *Snyder v. State Bar* (1990) 49 Cal.3d 1302.

Mack v. State Bar (1970) 2 Cal.3d 440: Respondent, with a prior discipline involving similar misconduct, was suspended for five years, stayed, two years actual suspension, for misappropriating \$1,346.74. Respondent had made misrepresentations to his clients to hide from them the fact that he had received their funds. No restitution was made to client. Respondent engaged in various deceptive acts or stalling tactics to avoid making restitution.

Sevin v. State Bar (1973) 8 Cal.3d 641: Respondent, with a prior for similar misconduct, was disbarred for failing to inform his clients that he had received their funds. He misappropriated all but an insignificant part of the funds for his own use. He fabricated a purported loan agreement with his clients to establish a premise for withholding the funds for nine months. In aggravation the Court found that the respondent lacked candor in testifying before a local committee and his was deceitful action in attempting to forestall the investigation by antedating and fabricating a proper accounting. Furthermore, in order to forestall the State Bar investigation, the respondent had his clients sign letters, stating they were repudiating their complaints and would not testify. The court noted that even without a prior discipline, they would have disbarred him.

Fitzpatrick v. State Bar (1977) 20 Cal.3d 73: Respondent commingled and misappropriated funds, and he failed to perform services for two clients. In aggravation, Respondent was unrepentant. He refused to make restitution to some of his victims and for those to whom he did make restitution, he is entitled to little credit for mitigation since the restitution was paid after being informed of State Bar complaints against him.

Rosenthal v. State Bar (1987) 43 Cal.3d 658: Respondent, with no prior discipline, was disbarred after he misappropriated several thousand dollars belonging to five clients and failed to pay his former employer under a fee-sharing arrangement. He also delayed relinquishing a file upon demand. In mitigation, Respondent admitted himself into a hospital treatment program for cocaine addiction, and Respondent was candid and cooperative. The court gave little weight toward mitigation to both the Respondent's restitution, because it came after the State Bar proceedings were initiated, and his lack of discipline, because he'd practiced only 3 and ½ years.

AGGRAVATING CIRCUMSTANCES.

Harm to Client (Standard 1.2(b)(iii): Regarding Mr. Ray Durrer, Respondent's failure to perform in this matter resulted in his client having to continue registering as a sex offender under penal law section 290 et sec. On 10/10/2000 Ray Durrer, a serviceman with the United States

Coast Guard, pled guilty to a misdemeanor in violation of Penal Code section 314(1) Indecent Exposure. As required under California law, Durrer was required to register as a sex offender under Penal Code section 290. On July 26, 2001 the Durrer withdrew his guilty plea, pursuant to a motion for relief under Penal Code section 1203.4. Durrer was eligible apply for a Certificate of Rehabilitation on April 27, 2003. On March 3, 2003, Durrer hired Respondent to pursue the Certificate of Rehabilitation. Respondent knew at the time of his employment that Mr. Durrer was due to be transferred out of California in 2003. The complainant paid Respondent \$2,500, which he did not earn.

Regarding Daniel Bretao, on April 19, 2004 Respondent was paid \$4,000 to represent Bretao in a criminal matter. The matter was dismissed on June 14, 2004. On June 24, 2004 the Respondent received \$25,000 in bail money from the court belonging to friends and relatives of Mr. Bretao. Respondent did not misrepresented to Mr. Bretao that he did not receive the money, and only returned the money in February of 2005 after the San Mateo District Attorney's office began investigating the situation.

Bad faith, dishonesty, concealment, overreaching, refusal or inability to account for trust funds (Standard 1.2(b)(iii): In both the charged cases, the Respondent misrepresented the status of the cases to his clients and to the State Bar of California.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e)(i) states that the absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious shall be considered a mitigating circumstance. In the instant case, the respondent was admitted to practice on March 29, 1993. He has no record of discipline. This may be considered mitigating under *Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr 96 (see page 106, *fn.* 13) and *Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 66.

Standard 1.2(e)(vii) states that objectives steps promptly taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps are designed to timely atone for any consequences of the member's misconduct shall be considered mitigating. In the instant case, the respondent was in possession of \$25,000 belonging to Dee Farnow and Carlos Bretao, represented bail funds for Daniel Bretao. On June 14, 2004, Daniel Bretao's criminal case was dismissed. Respondent held onto the funds until February 4, 2005. On or about that date, respondent refunded the \$25,000 and paid \$1,370 towards interest.

Furthermore, respondent in the instant matter suffered sever financial difficulties. This may be taken into consideration if they are extreme and result from cirucumstances that are not reasonably foreseeable or that are beyond the respondent's control. *In re Morse* (1995) 11 Cal. 4th 184, 222; *Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668.

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.

SUSPENSION NOTIFICATION REQUIREMENTS.

1. Within the first thirty days following commencement of probation, respondent shall provide written notifications concerning the suspension by registered or certified mail, return receipt requested, to:

- a. all clients being represented in pending matters;
- b. any co-counsel;
- c. any opposing counsel or unrepresented opposing parties; and
- d. the court, agency or tribunal in which any active litigation is pending.

2. The notification shall state the following:

- a. that the respondent has been suspended from the practice of law;
- b. the effective date of the suspension;
- c. the length of the suspension;
- d. the respondent's consequent ineligibility to render legal services during the period of the suspension; and
- e. in notifications to clients, any urgency in seeking the substitution of other legal counsel.

3. Within the first forty days following commencement of probation, respondent shall file an affidavit (or declaration in conformity with the requirements of California Code of Civil Procedure section 2015.5) with the Probation Unit showing that respondent has fully complied with these provisions.

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4. Respondent shall maintain complete records of the notifications and the certified or registered mailings and shall provide such records upon the request of the Office of the Chief Trial Counsel.

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

(Do not write above this line.)

In the Matter of Gregory Brubaker Member No. 163916	Case Number(s): 04-0-10121
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NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

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

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

- (a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

- (5) a statement that Respondent either

- (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
- (ii) pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:
 - (a) an acknowledgment that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and
 - (b) if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

7.20.05
Date

X
Signature

Gregory A. Brubaker
Print name

(Do not write above this line.)

In the Matter of Gregory A. Brubaker Member No. 163916	Case number(s): 04-0-10121
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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, Conclusions of Law and Disposition.

7-20-05
Date

X 
Respondent's signature

Gregory A. Brubaker
Print name

Date

Respondent's Counsel's signature

Print name

7-21-2005
Date


Deputy Trial Counsel's signature

Manuel Jimenez
Print name

(Do not write above this line.)

In the Matter of GREGORY A. BRUBAKER	Case number(s): 04-O-10121 04-O-14891
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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 stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

1. On page 1, the caption with case number(s) must include case no. 04-O-14891.
2. On page 4, (D) (1) --an "x" must be inserted in front of the box.
3. On page 4, (D)(1)(a)--an "x" must be inserted in the of the box and Respondent must be suspended from the practice of law for a period of 18 months.
4. On page 9, the third paragraph, the words nor disgorged any part of the bail refund proceeds must be stricken as Respondent has paid restitution to Dee Farnow and Carlos Bretao.
5. On page 13, the second full paragraph, the fourth line--the words "did not" are deleted.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

August 17, 2005
Date

Pat McElroy
PAT McELROY
Judge of the State Bar Court

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 San Francisco, on August 17, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed August 17, 2005**

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

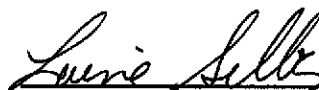
- [X]** by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**GREGORY A. BRUBAKER
PIER 33 SOUTH
SUITE 200
SAN FRANCISCO CA 94111**

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2005.



Laine Silber
Case Administrator
State Bar Court