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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
<b>Counsel for the State Bar</b> ERIN McKEOWN JOYCE DEPUTY TRIAL COUNSEL 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: (213) 765.1356  Bar #            149946	<b>Case number(s)</b>  04-O-15265 05-O-02202	<b>(for Court's use)</b>  <div style="text-align: center;"> <b>FILED</b>   <b>APR 24 2006</b> ✓  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent  ELLEN R. PECK 2410 CRESTVIEW ESTATES PLACE ESCONDIDO, CALIFORNIA 92027 TELEPHONE: (760) 480-2233  Bar #            88252	<b>PUBLIC MATTER</b>	
<b>In the Matter of</b>  NELSON ROSS BOYLAN  Bar #            75899  A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO 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 December 21, 1977  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
- (6) 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):
- (a) ☐ costs added to membership fee for calendar year following effective date of discipline
  - (b) ☒ costs to be paid in equal amounts prior to February 1 for the ~~following membership years~~  
two (2) billing cycles following the effective date of the Supreme Court Order  
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)
  - (c) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - (d) ☐ 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 1. 95-0-15677; 2. 02-0-13123
  - (b) ☒ Date prior discipline effective 1. July 4, 1998; 2. February 12, 1995
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: 1. Rule 3-210;  
2. 3-110(A) and 3-700(D) (2)
  - (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".  
1. 9 months suspension, stayed, 1 year probation, 30 days actual suspension; 2. 2 years suspension stayed, 2 years probation and 60 days actual suspension
- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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.  
See attachment
- (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 attachment
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_  
in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (10) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances:

#### D. Discipline

1. ☒ Stayed Suspension.

(a) ☒ Respondent 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: \_\_\_\_\_

The above-referenced suspension is stayed.

2. ☒ Probation.

Respondent is placed on probation for a period of Four (4) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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**E. Additional Conditions of Probation:**

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ Within 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.
- (4) ☒ 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 in each report 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.

- (5) ☐ 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.
- (6) ☒ 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.
- (7) ☐ 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 State Bar Ethics School, and passage of the test given at the end of that session.
  - ☒ No Ethics School recommended. Reason: Respondent has been required to complete Ethics School in connection with case no. 02-0-13123
- (8) ☐ 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.
- (9) ☐ 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             |

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**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 within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

☒ **No MPRE recommended. Reason:** Respondent has been required to pass the MPRE  
in connection with case no. 02-0-13123.

- (2) ☐ **Other Conditions:**

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

IN THE MATTER OF:        NELSON ROSS BOYLAN

CASE NUMBERS:            04-O-15265, 05-O-02202

**FACTS AND CONCLUSIONS OF LAW.**

**Case No. 04-O-15265            Violation of Rule of Professional Conduct 3-110(A) - Failure to Perform with Competence**

1.        On August 14, 2000, Maurice Assayag employed Respondent and Briggs & Baker, a credit counseling firm, to resolve his outstanding credit card debt. Assayag paid Respondent \$3,123.25 for Respondent to pursue an accord and satisfaction with several credit card companies on his behalf.

2.        On December 20, 2001, Respondent severed all ties with Briggs & Baker. Respondent failed to take any files related to the cases where he accepted employment to proceed with an accord and satisfaction, including Assayag's file.

3.        Respondent failed to perform legal services of any value for Assayag. Respondent failed to notify Assayag that he would not be performing any legal services on his behalf. Respondent has since refunded to Assayag all of the unearned fees which he paid to Respondent.

**Conclusions of Law**

4.        By failing to perform legal services on behalf of Assayag, specifically the accord and satisfaction, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

**Case No. 05-O-02202            Violation of Business and Professions Code section 6068(a) – Failure to Uphold the Laws**

5.        On February 19, 2003, the Attorney General filed a complaint for injunction, restitution and civil penalties against Briggs & Baker and its principals, alleging that the defendants engaged in unfair business practices. The action was filed in San Diego Superior Court, case number GIC 805762 and alleged that the defendants violated Business and Professions Code sections 17202 and 17535. Respondent, who had previously been an attorney for Briggs & Baker, was named as a defendant in the Attorney General's complaint.

6. Respondent had severed all ties with Briggs & Baker at least 14 months before the filing of the Attorney General's complaint. Most of the misconduct of Briggs & Baker alleged in the complaint occurred after Respondent had already left his employment with Briggs & Baker.

7. The Attorney General filed an amended complaint on February 2, 2004 which named Respondent as a defendant and alleged that Respondent engaged in unfair practices in violation of Business and Professions Code sections 17203 and 17535.

8. In August 2004, Respondent entered a stipulated judgment with the Attorney General. In the stipulated judgment Respondent acknowledged violating Business and Professions Code sections 17203 and 17535 in connection with his services rendered to Briggs & Baker. Respondent was enjoined from operating a debt management or debt negotiation service or engaging in credit repair. There were no other penalties or sanctions imposed on Respondent in the stipulated judgment.

### **Conclusions of Law**

9. By violating Business and Professions Code sections 17203 and 17535 in connection with his services rendered to Briggs & Baker, Respondent failed to uphold the laws of this state in wilful violation of Business and Professions Code section 6068(a).

### **AUTHORITIES SUPPORTING DISCIPLINE.**

#### **STANDARDS FOR ATTORNEY SANCTIONS**

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the protection of public confidence in the legal profession.

Pursuant to Standard 2.4(b), culpability of a member of wilfully failing to perform services in a client matter shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client. Under Standard 2.6(a):

Culpability of a member of a violation of [section 6068] 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.

In these cases, Respondent acknowledges violating Rule of Professional Conduct 3-110(A) and Business and Professions Code section 6068(a) in connection with his legal services rendered



while he was employed at Briggs & Baker. This misconduct occurred during the same time as the misconduct which occurred in the six client matters involved in the prior discipline, which resulted in a sixty day actual suspension in State Bar case nos. 02-O-13123 et al.

Pursuant to Standard 1.7(a):

If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline . . . , the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

In this case, however, the stipulated misconduct was contemporaneous with the prior misconduct for which Respondent has already been disciplined, and in fact consisted of the same kind of misconduct arising from Respondent's abrupt departure from Briggs & Baker without properly notifying his clients and taking steps to ensure that his clients were not prejudiced. Accordingly, it is appropriate to consider what discipline Respondent would have received if all the cases had been considered together in determining the appropriate level of discipline in this case. *In the Matter of Miller*, 1 Cal. State Bar Ct. Rptr. 131, 136-137 (Review Dept. 1990).

Since Respondent already received a sixty day actual suspension in the prior case (case no. 02-O-13123 et al), the stipulated discipline which increases Respondent's probation to four years is appropriate.

Respondent displayed candor and cooperated fully in these State Bar investigations, and is entitled to mitigation pursuant to Standard 1.2(e)(v). Respondent promptly notified the State Bar of the stipulated judgment with the Attorney General's office.

Respondent also refunded to Assayag the attorney's fees he paid in an act demonstrating remorse and recognition of wrongdoing, and is entitled to mitigation pursuant to Standard 1.2(e)(vii).

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was March 29, 2006.

RP

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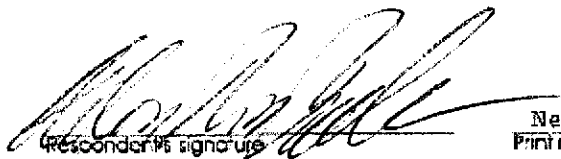
In the Matter of Nelson Ross Boylan	Case number(s): 04-0-15265 05-0-02202
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### SIGNATURE OF THE PARTIES

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.

APR 05 2006

Date



Respondent's signature

Nelson Ross Boylan  
Print name

April 10, 2006

Date



Respondent's Counsel's signature

Ellen R. Peck  
Print name

April 11, 2006

Date



Deputy Trial Counsel's signature

Erin McKeown Joyce  
Print name

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In the Matter of  Nelson Ross Boylan	Case number(s):  04-0-15265 05-0-02202
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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.

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

Date

4/21/06

  
RICHARD A. HONN

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 Los Angeles, on April 24, 2006, I deposited a true copy of the following document(s):

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

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

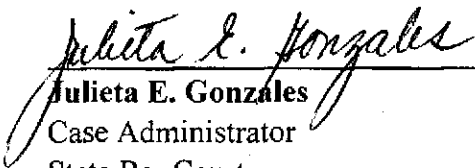
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ELLEN R PECK ATTORNEY AT LAW  
2410 CRESTVIEW ESTATES PL  
ESCONDIDO, CA 92027**

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

**Erin M. Joyce, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 24, 2006**.

  
\_\_\_\_\_  
**Julieta E. Gonzales**  
Case Administrator  
State Bar Court