



(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Eric H. Hsu Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1247 Bar # 213039	Case number(s) 04-0-15336-RMT	(for Court's use) <div style="text-align: center;"> FILED MAR -8 2006 <i>Yes</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent John W. Nelson WEISENBERG & NELSON, INC. 12399 Lewis Street, #103 Garden Grove, CA 92840-4643 (714) 703-7070 Bar # 73958	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of THOMAS KENNETH GARCIA Bar # 68919 A Member of the State Bar of California (Respondent)	PUBLIC MATTER	

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 June 25, 1976
(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 13 pages. *(THE ORIGINAL SIGNATURES OF THE PARTIES APPEAR ON TWO (2) SEPARATE PAGES, BOTH IDENTIFIED AS PAGE "12")*
14
- (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.

(Do not write above this line.)

(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 (public reproof)
- (b) case ineligible for costs (private reproof)
- (c) costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) costs entirely waived

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 01-0-00876

(b) Date prior discipline effective August 12, 2001

(c) Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A) of the Rules of Professional Conduct, and Business and Professions Code section 6068, subdivision (m).

(d) Degree of prior discipline Private Reproof, restricted.

(Do not write above this line.)

- (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.
- (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: None.

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.

(Do not write above this line.)

- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent was candid and he cooperated with the State Bar during discovery.

(Do not write above this line.)

D. Discipline:

- (1) Private reproof (check applicable conditions, if any, below)
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of One (1) year
- (2) During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

(Do not write above this line.)

- (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 conditions attached to the reproof.
- (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 of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required to be filed with the Office of Probation.
- (10) 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 of the effective date of the reproof.
- No MPRE ordered. Reason: _____
- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Do not write above this line.)

In the Matter of THOMAS KENNETH GARCIA	Case Number(s): 04-0-15336-RMT
---	---------------------------------------

Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within ~~___~~ days/ 12 months ~~___~~ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 3 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for _____ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS KENNETH GARCIA

CASE NUMBER: 04-O-15336-RMT

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified rule of the California Rules of Professional Conduct.

I. Facts.

1. Respondent THOMAS KENNETH GARCIA ("Respondent") was admitted to the practice of law in the State of California on June 25, 1976, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On or about September 14, 2000, Shirley A. Wentworth ("Wentworth") employed Respondent to assist her with matters concerning her deceased husband's estate.
3. Although no written fee agreement was executed by Wentworth and Respondent for this employment, Respondent was to assist Wentworth with her donating two (2) parcels of real property which were in the decedent's name, to St. Juliana Church in Fullerton, California ("St. Juliana Church"). Both parcels were located in California: one parcel was located in the County of Riverside (Assessor's Parcel Number 375124017, "the Riverside County parcel"); the other was located in the County of Kern (Assessor's Parcel Number 352-191-01-00-2, "the Kern County parcel").
4. To transfer title of the parcels from the decedent's name to Wentworth, Respondent submitted for filing with the Orange County Superior Court an "Inventory and Appraisal" and an "Affidavit re Real Property of Small Value." Both documents were filed on December 18, 2000, and title was transferred to Wentworth on that date.
5. Respondent contacted St. Juliana Church and was referred to the Diocese of Orange County regarding the donation. Respondent was informed by the Diocese of Orange County that it was not interested in Wentworth's donation. Respondent communicated to Wentworth that her donation was declined by the Diocese of Orange County.

6. On or about December 27, 2000, at Wentworth's request, Respondent contacted the Diocese of San Bernardino regarding the donation. The Diocese of San Bernardino also declined the donation. Respondent communicated that information to Wentworth.
7. Subsequently, Wentworth informed Respondent that she decided to give the Riverside County parcel to her son-in-law and that she would handle that transfer on her own. Thereafter, Respondent was only to handle the donation of the Kern County parcel.
8. On or about December 27, 2000, with Wentworth's authorization, Respondent wrote the Diocese of Fresno regarding the Kern County parcel. Respondent enclosed with his December 27, 2000 letter a "Grant Deed" executed by Wentworth, conveying title of the Kern County parcel to the Diocese of Fresno.
9. Respondent did not provide to the Diocese of Fresno a copy of the Affidavit re Real Property of Small Value filed on December 18, 2000.
10. By letter dated April 11, 2001, the Diocese of Fresno confirmed its acceptance of the donation, by writing Wentworth to thank her for donating the Kern County parcel.
11. By letter dated April 15, 2001, the Kern County Assessor-Recorder informed the Diocese of Fresno that the Assessor could not change title from Wentworth to the Diocese of Fresno, because the title was still vested in the name of the decedent. To change title, the Assessor needed proof showing that the Kern County parcel was transferred to Wentworth. The Affidavit re Real Property of Small Value would provide that information.
12. Respondent never advised Wentworth that she needed to provide the Affidavit re Real Property of Small Value to the Diocese of Fresno, nor did he provide that Affidavit re Real Property of Small Value to the Diocese of Fresno, in order to complete the donation of the Kern County parcel from Wentworth to the Diocese of Fresno. Respondent ceased work.
13. Respondent never informed Wentworth that he was ceasing work on her donating the Kern County parcel or that she should seek new counsel.

//

II. Conclusion of Law.

By ceasing representation of Wentworth without providing the Affidavit re Real Property of Small Value to the Diocese of Fresno, which was needed to transfer title of the Kern County parcel from Wentworth to the Diocese of Fresno, or advising Wentworth to provide the Affidavit re Real Property of Small Value to the Diocese of Fresno, Respondent failed to take reasonable steps upon termination of employment to avoid reasonably foreseeable prejudice to the rights of Wentworth and the Diocese of Fresno, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

WAIVERS.

By this stipulation, the parties hereby waive any variance between the Notice of Disciplinary Charges that was filed on September 7, 2005, and the findings of fact and/or conclusions of law contained in this Stipulation.

Additionally, the parties hereby waive the issuance of an amended Notice of Disciplinary Charges and waive the right to have a formal hearing on any charge not included in the current Notice of Disciplinary Charges.

DISMISSALS.

The parties respectfully request this court to dismiss the following alleged violations, in the interest of justice:

<u>Case Number</u>	<u>Count</u>	<u>Alleged Violation</u>
04-O-15336	Two	Business and Professions Code section 6068, subdivision (m); and
04-O-15336	Three	Business and Professions Code section 6068, subdivision (i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(7), was February 2, 2006.

//

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.7(a) provides that, where a 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 imposed 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.

Standard 2.10 provides that a 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 harm to any victim, with due regard to the purposes set forth in standard 1.3.

In the Matter of Hanson (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703. The Review Department recommended public reproof with condition for Hanson's misconduct in a single client matter involving the failure to return an unearned fee and improper withdrawal from representation. No significant weight in aggravation was given to Hanson's prior record of a private reproof imposed some 19 years ago. Although the client was harmed by the delay in refund, no aggravation was found because the harm was not significant.

(Do not write above this line.)

In the Matter of THOMAS KENNETH GARCIA	Case number(s): 04-0-15336-RMT
---	---------------------------------------

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.

Date _____

Respondent's signature _____

THOMAS KENNETH GARCIA
Print name _____

Date 02/21/06


Respondent's Counsel's signature _____

JOHN W. NELSON
Print name _____

Date _____

Deputy Trial Counsel's signature _____

ERIC H. HSU
Print name _____

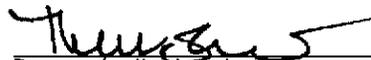
(Do not write above this line.)

In the Matter of THOMAS KENNETH GARCIA	Case number(s): 04-0-15336-RMT
---	---------------------------------------

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.

Feb 23, 2006
Date


Respondent's signature

THOMAS KENNETH GARCIA
Print name

02/21/06
Date


Respondent's Counsel's signature

JOHN W. NELSON
Print name

Feb. 27, 2006
Date


Deputy Trial Counsel's signature

ERIC H. HSU
Print name

(Do not write above this line.)

In the Matter of THOMAS KENNETH GARCIA	Case number(s): 04-0-15336-RMT
---	---------------------------------------

ORDER

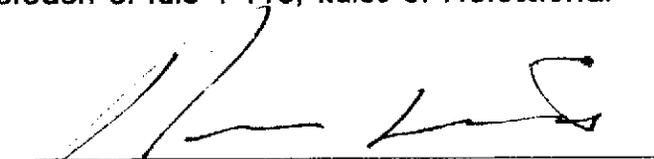
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

3/6/06
Date



Judge of the State Bar Court

ROBERT M. TALCOTT

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 March 8, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING PUBLIC REPROVAL**

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

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

**John William Nelson
Weisenberg & Nelson
12399 Lewis St #103
Garden Grove CA 92840 4643**

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

ERIC H. HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 8, 2006.**



Tammy R. Cleaver
Case Administrator
State Bar Court