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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar DAVID T. SAUBER Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1252 Bar # 176554	Case number(s) 05-C-03762	(for Court's use) <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">JUN 12 2006</div> <div style="text-align: center; font-size: 0.8em;"> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent NICHOLAS F. COSCIA , % Milberg & DePhillips, 2163 Newcastle Ave., Ste. 200 Cardiff-By-The-Sea, California 92007 Telephone: (858) 792-7300 Bar # 93248	<div style="text-align: center; font-size: 1.5em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of NICHOLAS FRANCIS COSCIA Bar # 93248 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 November 30, 1979
(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." See Attached.
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law." See Attached.
- (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 discipline.
(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 94-C-13903
- (b) ☒ Date prior discipline effective 05/08/1997
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: B&P Sections 6101 & 6102; as a
result of Respondent's conviction in U.S. District Court, Case No.
CRS 93-282 for violation 18 USC 371.
- (d) ☒ Degree of prior discipline Two (2) Years Stayed Suspension; Thirty (30) months
probation on condition of Nine (9) months Actual Suspension
- (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.

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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~~ 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 \$ _____ 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 One (1) Year
- 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 Two (2) 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: _____
- (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: _____

- (2) ☒ **Other Conditions:**

See Attachment to Stipulation section entitled: "Other Conditions Negotiated by the Parties."

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **NICHOLAS FRANCIS COSCIA**
CASE NUMBERS: **05-C-03762**

FACTS AND CONCLUSIONS OF LAW:

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

Facts for Case No. 04-C-03762

1. On May 22, 2002, in San Diego Superior Court Case No. CN140623, Respondent was convicted of a misdemeanor violation of Vehicle Code section 23152(a): Driving under the influence of alcohol.
2. On June 27, 2005, while driving a vehicle, Respondent was observed by police officers stopping in traffic lanes without cause and then turning abruptly. Respondent was pulled over by the police officers. After performing field sobriety tests, Respondent was arrested for driving under the influence of alcohol. Respondent subsequently took a breath test to determine blood-alcohol content which measured at .21%.
3. On September 12, 2005, Respondent pled guilty to Count One of the Criminal Complaint filed in San Diego Superior Court, Case No. M967353. Count One charged Respondent with a misdemeanor violation of Vehicle Code section 23152(a): Driving under the influence of alcohol. The remaining counts of the criminal complaint were dismissed as part of the plea.
4. On September 12, 2005, Respondent was sentenced to summary probation for five years and order to complete five days work in the Public Service Work Program. Further, Respondent was ordered to pay a fine and his drivers license was suspended for 90 days.

Conclusions of Law for Case No. 04-C-03762

5. The facts and circumstances surrounding Respondent's conviction involves other misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102.

AUTHORITIES SUPPORTING DISCIPLINE:

Protection of clients, the public, the courts and the integrity of the legal profession guides the imposition of discipline [Standard 1.3, Standards for Attorney Sanctions for Professional Misconduct; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1307].

Standard 1.7 states that 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 imposed was so remote in time to the current proceeding and the offense for which it was imposed greater discipline in the current proceeding would be manifestly unjust. In the present case, Respondent has one prior discipline. This discipline resulted out of a criminal conviction over ten years ago for conspiracy to commit securities fraud. Although such a prior is relevant and impacts the level of discipline, the current conviction is removed in time and nature as to make imposing a greater degree of discipline unjust.

Under Standard 3.4, the discipline suggested for an attorney's conviction of a crime not involving moral turpitude but involving "other misconduct warranting discipline" is that discipline "appropriate to the nature and extent of the misconduct." [*In re Kelley* (1990 52 Cal.3d 487, 498)].

In *Kelley*, the attorney's misconduct consisted of a second drunk driving conviction thirty-one months after her first drunk driving conviction. That second drunk driving was also a violation of her criminal probation on that first drunk driving conviction. Her first drunk driving incident occurred less than a year and a half after her admission to the State Bar. Her BAC in the first incident was .10%. About two years later she again was arrested for drunk driving with a BAC of .16/.17%. The court found several significant mitigating factors, but also that the crimes were serious and involved a threat of harm to the public. The discipline imposed was a public reproof for a period of three years on conditions that included a referral to the then-existing State Bar Program on Alcohol Abuse.

In *In re Carr* (1988) 46 Cal.3d 1089, the attorney was admitted in 1976 and was twice convicted of drunk driving in separate incidents in 1983 and 1984. The second was also a violation of his probation on the first. He had a record of a prior discipline. The attorney was suspended for two years, stayed, and placed on probation for five years on conditions that included he be actually suspended for the six months and until he made a showing to the court of his rehabilitation, fitness to practice, and learning and ability in the law pursuant to Standard 1.4(c)(ii).

OTHER CONDITIONS NEGOTIATED BY THE PARTIES:

SUBSTANCE ABUSE CONDITIONS:

Submit to Examination:

Either prior to or within 30 days of the effective date of the discipline in this matter, Respondent shall submit to a medical examination by an expert in alcoholism certified by the American Society of Addiction Medicine (the "expert"), to be mutually agreed upon by Respondent and the State Bar prior to the examination. The expert shall conduct an evaluation and issue a report to the Office of Probation setting forth recommendations to address Respondent's condition re alcohol.

Compliance with Recommended Treatment:

For the duration of the probation in this matter, Respondent shall comply with all treatment conditions recommended by the expert, either as originally set forth or as may be

modified thereafter.

Respondent shall report compliance with these conditions by statement under penalty of perjury in each written quarterly report to the Office of Probation required pursuant to the discipline in this matter and provide such satisfactory proof of compliance as the Office of Probation may request.

Consent for Release of Treatment and Recovery Information:

Respondent shall provide a written consent to the expert and to all alcohol or drug recovery or treatment providers, including drug testing facilities, who provide services as identified in these Substance Abuse Conditions to release information to the Office of Probation regarding treatment and compliance.

Copy of this Stipulation to all Treatment Providers:

Respondent shall deliver a copy of this stipulation to the expert and to all treatment providers who provide to the services described in these Substance Abuse Conditions.

Reporting Consent and Delivery of Stipulation:

Respondent shall report compliance with the condition of providing consent to release treatment and recovery information and delivering of this stipulation to the expert and to the treatment providers, by statement under penalty of perjury in each written quarterly report to the Office of Probation required pursuant to this order and provide to the Office of Probation satisfactory proof of compliance if requested.

Costs are Responsibility of Respondent

Respondent shall be responsible for the prompt and timely payment of all costs associated with these Substance Abuse Conditions, including without limitation, the cost of examination(s), testing, treatment or therapy, and any and all other costs related to these Substance Abuse Conditions.

MODIFICATION OF CONDITIONS:

Modification of these conditions shall be pursuant to the Rules of Procedure of the State Bar of California, rule 550 et seq.

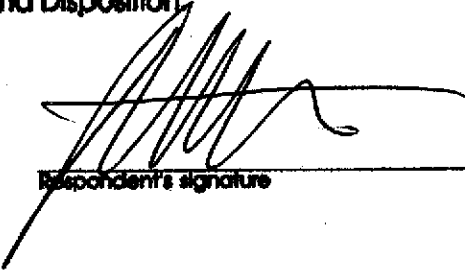
These conditions may be modified upon further determination of treatment conditions appropriate for this Respondent to specify more a detailed description of conditions, compliance and monitoring.

(Do not write above this line.)

In the Matter of NICHOLAS FRANCIS COSCIA Member #: 93248	Case number(s): 05-C-03762
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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.

06/06/06 Date	 Respondent's signature	NICHOLAS F. COSCIA Print name
_____ Date	_____ Respondent's Counsel's signature	_____ Print name
_____ Date	_____ Deputy Trial Counsel's signature	DAVID T. SAUBER Print name

(Do not write above this line.)

In the Matter of NICHOLAS FRANCIS COSCIA Member #: 93248	Case number(s): 05-C-03762
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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.

06/06/06
Date


Respondent's signature

NICHOLAS F. COSCIA
Print name

Date

Respondent's Counsel's signature

Print name

6-6-06
Date


Deputy Trial Counsel's signature

DAVID T. SAUBER
Print name

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In the Matter of NICHOLAS FRANCIS COSCIA Member #: 93248	Case number(s): 05-C-03762
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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.)

6-8-06

Date


ROBERT M. TALCOTT
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 June 12, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL
SUSPENSION**

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:

**NICHOLAS FRANCIS COSCIA
P O BOX 789
CARDIFF, CA 92007**

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

DAVID T. SAUBER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 12, 2006.**



Tammy R. Cleaver
Case Administrator
State Bar Court