




ORIGINAL

(Do not write above this line.)

**State Bar Court of California
Hearing Department
Los Angeles**

Counsel For The State Bar AGUSTIN HERNANDEZ OFFICE OF THE CHIEF TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1713	Case Number (s) 06-O-10690 & 06-O-13151 (Inv. Case No. 09-O-10629)	(for Court's use) <p align="center">PUBLIC MATTER</p> <p align="center">FILED </p> <p align="center">JUL 24 2009</p> <p align="center">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
Bar # 161625 Counsel For Respondent MICHAEL E. WINE 301 N. Lake Ave., Suite 800 Pasadena, CA 91101 (626) 796-6688	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # 58657 In the Matter Of: BERNAL P. OJEDA Bar # 140387 A Member of the State Bar of California (Respondent)		

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 6, 1989**.
- (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 consists of **15** pages, not including the order.
- (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."

(Do not write above this line.)

- (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.
- (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: **2010 and 2011.**
(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 **96-O-649.**
 - (b) ☒ Date prior discipline effective **March 13, 1997.**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **4-100(A).**
 - (d) ☒ Degree of prior discipline **Public Reprimand.**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.
- (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

In an effort to more properly supervise his employees and to exercise proper control over his law office, in January 2006, Respondent unilaterally closed his law office in Gardena, California, and is

currently in the process of closing his law office in Montebello, California. When Respondent completes the process of closing his practice in Montebello, he will only be practicing law in one office located in Calabasas, California.

Additionally, Respondent is in the process of changing his area of practice. Respondent will end his high volume practice of bankruptcy law and immigration law and will start taking cases in criminal law, juvenile law, and family law.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one 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:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **60 days**.

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.
- (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 checked="" 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

☐ No MPRE recommended. Reason:

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, 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 language begins here (if any):

Case No. 06-O-10690

FACTS:

1. On October 17, 2004, Francisco Jaime ("Francisco") and Martha Jaime ("Martha") saw a Spanish television commercial advertising Respondent's law office. After observing this commercial, on October 17, 2004, Martha called Respondent's office and spoke with a non-attorney member of Respondent's staff. Martha told Respondent's employee that she had seen Respondent's commercial on TV and wanted to file for bankruptcy protection. At no time during this conversation did Respondent's employee inquire about Martha's finances and Martha did not disclose any financial information. Respondent's employee told Martha that a member of Respondent's staff would come to Martha's home later in the day to answer questions and with documents for her to sign.
2. In the evening of October 17, 2004, a non-attorney member of Respondent's staff went to Francisco and Martha's home. On this date, Respondent's employee asked Francisco and Martha questions about their income, assets and liabilities which they answered. Based upon the information that Francisco and Martha provided, Respondent's employee told them that they qualified for bankruptcy protection under Chapter 7 of the Bankruptcy Code. On this date, Francisco and Martha told Respondent's employee that their petition must be filed with the court before the new bankruptcy laws (Bankruptcy Abuse Prevention and Consumer Protection Act) went into effect. Francisco and Martha knew that the bankruptcy laws were changing but did not know the date when the new laws would become effective. Respondent's employee told Francisco and Martha that Respondent's office would prepare and file their bankruptcy petition for \$1,300 in attorney fees plus the filing fee. On this date, Francisco and Martha signed a retainer agreement employing Respondent to prepare and file the bankruptcy petition. Pursuant to the agreement, Francisco and Martha were to pay Respondent's attorney fees by making payments of \$400, \$300, \$300 and \$300, on October 17, 2004, November 15, 2004, December 15, 2004, and January 15, 2005, respectively.
3. Respondent's employee's decision as to whether Respondent would accept Francisco and Martha as clients, setting Respondent's legal fees, and advising Francisco and Martha that they qualified for bankruptcy protection and that they could file a bankruptcy petition, constituted the practice of law.
4. Respondent failed to properly supervise his employees which resulted in non-attorney staff members practicing law.
5. At all times relevant to the events alleged herein, Respondent knew that Francisco and Martha wanted their petition to be filed with the court before the new bankruptcy laws went into effect on October 17, 2005.
6. Pursuant to the terms of the retainer agreement with Respondent, Francisco and Martha made the required payments for attorney fees on or about the date each payment was due with the last payment being paid on January 1, 2005.
7. In early 2005, after Francisco and Martha paid Respondent \$1,300 in attorney fees, Respondent sent Francisco and Martha a letter asking them to come to his office on March 9, 2005, to finalize and sign the

bankruptcy petition, and to pay \$209 for the filing fee.

8. On March 9, 2005, Francisco and Martha went to Respondent's office and met with Respondent's associate. On this date, Francisco and Martha provided Respondent's associate additional information as had been requested, signed the bankruptcy petition, and paid \$209 for the filing fee. On this date, Respondent's associate also requested that Francisco and Martha provide further information.

9. On May 4, 2005, Francisco and Martha sent Respondent all of the additional information that had been requested on March 9, 2005. Respondent received the requested information.

10. The new bankruptcy laws went into effect on October 17, 2005.

11. Respondent failed to file a bankruptcy petition on behalf of Francisco and Martha before the new bankruptcy laws became effective on October 17, 2005.

12. From May 2005 through October 2005, Francisco and Martha called Respondent's office numerous times and spoke with members of Respondent's staff. In each of these calls, Respondent's staff told Francisco and Martha that they did not know the status of the petition. In each of these calls, Francisco and Martha left messages with Respondent's staff asking that Respondent call them back and provide them with a status update of their bankruptcy petition. In these messages to Respondent, Francisco and Martha stated that they wanted their petition filed before the new bankruptcy laws went into effect. Respondent received the messages. Respondent did not return the calls.

13. On November 13, 2005, Respondent's employee, "Sandra," called Martha and informed her that Respondent had failed to file Francisco and Martha's bankruptcy petition before the new bankruptcy laws became effective on October 17, 2005, and that their petition had to be prepared again to conform with the new bankruptcy laws.

14. On June 5, 2006, a State Bar Investigator sent a letter to Respondent and requested that Respondent respond in writing to specified allegations of misconduct made by Martha. Respondent received the letter.

15. In preparing to respond to the State Bar Investigator's June 5, 2006 letter, Respondent reviewed Francisco and Martha's file. The file contained a facsimile transmission cover page that had been altered by one of Respondent's employees to misrepresent that Francisco and Martha did not provide to Respondent all of the information that was requested of them until September 4, 2005, when they had actually provided it on May 4, 2005. Specifically, the date on the facsimile transmission cover page that Francisco and Martha used on May 4, 2005, to transmit additional information to Respondent was changed from May 4, 2005, to September 4, 2005, to misrepresent that Francisco and Martha did not provide the requested information until September 4, 2005. This alteration was conducted without Respondent's knowledge and consent.

16. Additionally, one of Respondent's employee created false notes purporting that in August 2005, Respondent's office contacted Francisco and Martha for additional information; Francisco and Martha forwarded the requested additional information to Respondent's office on September 4, 2005; thereafter, Francisco and Martha failed to come in to Respondent's office to sign the petition until in March 2006; and that in March 2006, Martha told Respondent's office that she had not been in communication with

Respondent's office earlier because she had been experiencing personal problems. These false notes were created without Respondent's knowledge and consent.

17. In response to the State Bar Investigator's June 5, 2006 letter, on June 19, 2006, Respondent sent a letter to the State Bar Investigator. Relying on the altered facsimile transmission cover page and the fabricated notes, in his June 19, 2006 letter to the State Bar, Respondent incorrectly stated that: in August 2005, his office contacted Francisco and Martha for additional information; Francisco and Martha forwarded the requested additional information to Respondent's office on September 4, 2005; thereafter, Francisco and Martha failed to come in to Respondent's office to sign the petition until in March 2006; and that in March 2006, Martha told Respondent that she had not been in communication with Respondent earlier because she had been experiencing personal problems. Respondent also attached a copy of the altered facsimile transmission cover to his June 19, 2006 letter to the State Bar.

18. At no time after May 4, 2005, did Respondent or any of his employees request additional information from Francisco or Martha.

19. At no time after May 4, 2005, did Francisco or Martha send to Respondent's office any additional information pertaining to their petition.

CONCLUSIONS OF LAW:

20. By allowing his non-attorney employees to engage in the unauthorized practice of law, alter the date on the facsimile cover page, and fabricate notes, Respondent failed to properly supervise his employees, thereby intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

21. By failing to file a bankruptcy petition on behalf of Francisco and Martha before the new bankruptcy laws became effective on October 17, 2005, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

22. By failing to respond to Francisco and Martha's telephone calls between May 2005 and October 2005, Respondent failed to respond to a client's reasonable status inquiries in wilful violation of Business and Professions Code, section 6068(m).

Case No. 06-O-13151

FACTS:

23. On May 15, 2005, Gerardo Limon ("Limon") employed Respondent to prepare and file a bankruptcy petition on his behalf. On this date, Limon told Respondent that his petition must be filed with the court before the new bankruptcy laws went into effect. Limon knew that the bankruptcy laws were changing but did not know the date when the new laws would become effective. Respondent agreed to prepare and file the bankruptcy petition for \$1,200 in attorney fees plus the filing fee. On this date, Limon signed a retainer agreement with Respondent. Pursuant to their agreement, Limon was to pay for Respondent's attorney fees by making payments of \$200, \$300, \$300, \$200 and \$200, on May 16, 2005, June 10, 2005, July 10, 2005, August 10, 2005, and September 10, 2005, respectively. Pursuant to their agreement, upon complete

payment of Respondent's attorney fees, Limon was required to sign the petition and pay for the filing fee, and Respondent was required to finalize the petition and file it with the court.

24. At all times relevant to the events alleged herein, Respondent was aware that Limon wanted the petition to be filed with the court before the new bankruptcy laws went into effect on October 17, 2005.

25. Pursuant to the terms of the agreement, Limon made the required payments for attorney fees on or about the date each payment was due with the final payment being paid on September 9, 2005.

26. On September 9, 2005, after Limon paid Respondent \$1,200 in attorney fees, Limon called Respondent's office to schedule an appointment to sign the bankruptcy petition and to pay for the filing fee. On this date, Limon spoke with one of Respondent's employees and told her that he wanted to ensure that his petition would be filed before the new bankruptcy laws went into effect. On this date, Limon was still unaware of the effective date of the new bankruptcy laws. On this date, Respondent's employee scheduled an appointment with Limon for October 18, 2005.

27. On October 17, 2005, the new bankruptcy laws became effective.

28. Respondent failed to file a bankruptcy petition on behalf of Limon before the new bankruptcy laws became effective on October 17, 2005.

29. On October 18, 2005, Limon went to Respondent's office to sign the petition and to pay for the filing fee. On this date, Respondent's employee, "Yerica," told Limon that the new bankruptcy laws had become effective the day before. On October 18, 2007, Limon told Yerica that he was terminating Respondent's services and asked for a refund of unearned fees.

30. At no time did Respondent file a bankruptcy petition on behalf of Limon.

31. Respondent did not provide any legal services of value to Limon.

32. Respondent did not earn any portion of the fees paid by Limon.

33. Between October 18, 2005, and January 11, 2006, Limon called Respondent's office approximately 15 times to request a refund of unearned fees. In each of these calls, Limon spoke with Respondent's employee, "Estella," and left messages for Respondent requesting a refund of unearned fees. Respondent received the messages. Respondent did not return the messages or provide a refund.

34. On January 11, 2006, Limon sent a letter to Respondent informing him that he had terminated his services and requested a refund of unearned fees. Respondent received the letter.

35. On July 18, 2006, the State Bar opened an investigation, case no. 06-O-13151 pursuant to a complaint filed by Limon.

36. On October 2, 2006, a State Bar Investigator sent a letter to Respondent regarding Limon's allegations of misconduct against Respondent. Respondent received the letter.

37. After receiving the State Bar Investigator's October 2, 2006 letter, on October 16, 2006, Respondent sent to Limon a check for unearned fees in the amount of \$1,200.

CONCLUSIONS OF LAW:

38. By failing to file a bankruptcy petition on behalf of Limon before the new bankruptcy laws became effective on October 17, 2005, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

39. By failing to refund to Limon any portion of the \$1,200 in fees, which he had not earned, for approximately one year and until after he was contacted by the State Bar, Respondent failed to promptly refund unearned fees in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

(Inv. Case no. 09-O-10629)

FACTS:

40. On July 12, 2008, Arhemhy Carrillo ("Carrillo") went to Respondent's law office for legal representation regarding the filing of a bankruptcy petition on her behalf. On this date, Carrillo met only with a non-attorney member of Respondent's staff, Salvador Leon ("Leon"). On this date, Leon asked Carrillo questions about her income, assets, liabilities and immigration status which she answered. Based upon the information that Carrillo provided to Leon, Leon told Carrillo that she qualified for bankruptcy protection under the Bankruptcy Code. On this date, Leon told Carrillo that Respondent's office would prepare and file her bankruptcy petition for \$1,700 in attorney fees plus the filing fee. On this date, Carrillo employed Respondent to prepare and file a bankruptcy petition.

41. Leon's decision as to whether Respondent would accept Carrillo as a client, setting Respondent's legal fees, and advising Carrillo that she qualified for bankruptcy protection and that she could file a bankruptcy petition, constituted the practice of law.

42. Respondent failed to properly supervise his employee which resulted in Leon practicing law.

43. On July 19, 2008, Carrillo paid Respondent's office \$1,700 in attorney fees.

44. At no time did Respondent file a bankruptcy petition on behalf of Carrillo.

45. Respondent did not provide any legal services of value to Carrillo.

46. Respondent did not earn any portion of the fees paid by Carrillo.

47. Between September 2008 and December 2008, Carrillo called Respondent's office approximately 5 times to request a refund of unearned fees. In each of these calls, Carrillo spoke with Leon or Respondent's employee, "Lucia," and left messages for Respondent requesting a refund of unearned fees. Respondent received the messages. Respondent did not return the messages or provide a refund.

48. On September 26, 2008, and October 28, 2008, Carrillo sent letters to Respondent informing him that she had terminated his services and requested a refund of unearned fees. Respondent received the letters.
49. On March 2, 2009, the State Bar opened an investigation, case no. 09-O-10629 pursuant to a complaint filed by Carrillo.
50. On March 18, 2009, a State Bar Investigator sent a letter to Respondent's counsel regarding Carrillo's allegations of misconduct against Respondent. Respondent was made aware of this letter and its contents.
51. After receiving notice of the State Bar Investigator's March 18, 2009 letter to his attorney, in April 2009, Respondent sent to Carrillo a check for unearned fees in the amount of \$1,700.

CONCLUSIONS OF LAW:

52. By allowing Leon to engage in the unauthorized practice of law, Respondent failed to properly supervise his employees, thereby intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).
53. By failing to refund to Carrillo any portion of the \$1,700 in fees, which he had not earned, for approximately seven months and until after he was contacted by the State Bar, Respondent failed to promptly refund unearned fees in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

AUTHORITIES SUPPORTING DISCIPLINE.

In one case, an attorney received a one year stayed suspension conditioned upon a 60-day actual suspension and three years of probation for failing to supervise employees and to monitor his clients' cases which resulted in four cases being dismissed by the court. The respondent had four law offices with various employees including a secretary who hid and threw away files, incoming pleadings, notices and other documents because of personal problems. Although the respondent had no actual knowledge about what the secretary was doing, he did have an obligation to know the status of his cases. The respondent did not have an effective system for periodic review of his files to provide him with the status of his cases. The respondent also failed to "maintain an effective calendaring and follow-up system as a means of supervising employees and monitoring cases. . . ." In addition to the four counts of failure to perform legal services with competence, the court found the respondent culpable of one count of failure to inform a client of a significant event and one count of failure to release the client file. In mitigation, the respondent had no prior record of discipline in 21 years of practice. The respondent closed three of his four offices and reduced his staff and caseload before being contacted by the State Bar. In aggravation, the respondent's conduct caused significant harm to two clients. *In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608.

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: "the protection of the public, the courts and the legal

profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. In re Silverton (2005) 36 Cal. 4th 81, 91-92.

Standard 1.7(a) provides that if a member has a 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 2.4(b) provides that “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully 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(a) provides that Respondent’s violation of Business and Professions Code, section 6068(m) shall result in suspension or disbarment “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 a violation of any provision or rule of the Business and Professions Code or Rules 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.”

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, section A.(7), was on June 3, 2009.

///

In the Matter of
BERNAL P. OJEDA

Case number(s):
06-O-10690 & 06-O-13151
(Inv. Case No. 09-O-10629)

A Member of the State Bar

Law Office Management Conditions

- a. ☒ Within **90 days/XX months/XX 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 **XX days/XX months/one 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 **6 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 **two 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.

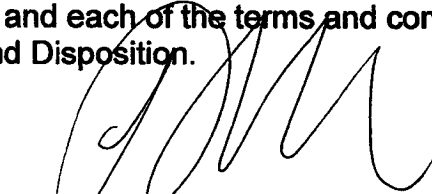
(Do not write above this line.)

In the Matter of BERNAL P. OJEDA	Case number(s): 06-O-10690 & 06-O-13151 (Inv. Case No. 09-O-10629)
-------------------------------------	--

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 Fact, Conclusions of Law and Disposition.

6/18/09
Date


Respondent's Signature

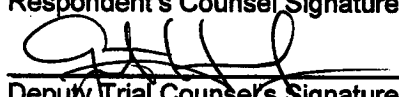
BERNAL P. OJEDA
Print Name

6/18/09
Date


Respondent's Counsel Signature

MICHAEL E. WINE
Print Name

June 22, 2009
Date


Deputy Trial Counsel's Signature

AGUSTIN HERNANDEZ
Print Name

(Do not write above this line.)

In the Matter Of
BERNAL P. OJEDA

Case Number(s):
06-O-10690 & 06-O-13151
(Inv. Case No. 09-O-10629)

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 9.18(a), California Rules of Court.)**

Date

July 24, 2009

Pat McElroy
Judge of the State Bar Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE BY REGULAR MAIL

CASE NUMBER: 06-O-10690 & 06-O-13151 (Inv. Case No. 09-O-10629)

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

**MICHAEL E. WINE
301 N. LAKE AVE., SUITE 800
PASADENA, CA 91101**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 22, 2009

Signed: 
Lupe Pacheco-Granados
Declarant

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 July 24, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

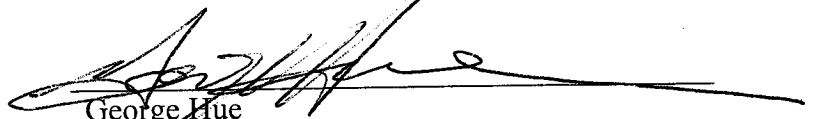
in a sealed envelope for collection and mailing on that date as follows:

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

MICHAEL E. WINE
301 N LAKE AVE STE 800
PASADENA, CA 91101 - 5113
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Agustin Hernandez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 24, 2009.


George Hue
Case Administrator
State Bar Court