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 <p>018 040 142</p> <p>State Bar Court of California Hearing Department Los Angeles</p> <p>PUBLIC MATTER</p>		
<p>Counsel For The State Bar</p> <p>Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336</p> <p>Bar # 117910</p>	<p>Case Number (s)</p> <p>06-O-10871-RAH 09-O-13837-RAH</p>	<p>(for Court's use)</p> <p>FILED NOV 10 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Arthur L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996</p> <p>Bar # 57703</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>MICHAEL EDWARD GRODSKY</p> <p>Bar # 41379</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 January 5, 1968.
- (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 10 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."
- (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):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - 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)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - 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
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. See Attachment to Stipulation, page 8.
- (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. See Attachment to Stipulation, page 8.

- (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:

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 Reproval:

- (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 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 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 30 (thirty) 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 the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the 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 conditions attached to the reproval.
- (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) 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 reproval.
- No MPRE recommended. Reason: _____
- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Respondent shall settle the issue of a refund to former client John Moore to the satisfaction of Moore, or, in the alternative, shall have that issue resolved by the State Bar fee arbitration program, pursuant to Business and Professions Code sections 6200 et seq. This refund issue is to be resolved prior to the final probation report, and satisfactory proof of its resolution shall be included in one of the quarterly reports or the final report, as appropriate, to the Office of Probation.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL EDWARD GRODSKY
CASE NOS.: 06-O-10871-RAH; 09-O-13837-RAH

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on May 14, 2010 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS FOR CASE 06-O-10871-RAH:

1. On May 16, 2005, a client ("AW") hired Respondent to represent her in a child protective custody proceeding. (The actual names of clients are not used here because of the confidentiality requirements of section 827 of the Welfare and Institutions Code.) The Department of Children and Family Services ("DCFS") was seeking to make her two children dependents of the juvenile court due to alleged child endangerment, and a probable cause hearing was set for June 6, 2005. AW also hired Respondent to defend her in the related criminal case for child endangerment. Respondent and AW agreed in writing to a fixed fee of \$7,500.00 for both cases, which AW paid by May 23, 2005.
2. Also on May 23, 2005, another client ("BB") hired Respondent to represent him in the same juvenile dependency proceeding for which AW hired Respondent. BB is the father of AW's younger child, and had been appointed counsel by the court. Respondent and BB agreed in writing to a fixed fee of \$2,500.00, which BB's mother paid Respondent that same day.
3. BB gave Respondent instructions to oppose DCFS and help AW retain custody of their son. Respondent knew there was a potential conflict of interests between AW and BB in that the evidence presented against AW might show her to be an unfit mother, and BB's duty to his child might then require him to oppose AW's custody of the child.
4. Despite his knowledge of their potential conflict of interests, Respondent never obtained the written consent of either AW or BB to his joint representation of them in the dependency matter.
5. On June 6, 2005, Respondent submitted two substitution of attorney forms to the juvenile court at the start of the probable cause hearing. The court allowed the substitution form for AW to be filed, but rejected the substitution for BB, citing an impermissible conflict of interest. Respondent repeated his request to represent BB at a status conference on July 7, 2005, but the substitution was rejected again by the court.

6. On July 14, 2005, Respondent informed BB that he would be unable to represent him in the protective custody proceeding. Respondent performed 10.6 hours of work on the matter prior to termination of his services. On November 3, 2010, Respondent paid a refund of \$1,000.00 to BB's mother.

CONCLUSIONS OF LAW FOR CASE 06-O-10871-RAH:

7. By failing to obtain the written consent of both AW and BB, Respondent willfully accepted representation of two clients in a matter in which their interests potentially conflicted without the informed written consent of each client, in violation of rule 3-310(C)(1) of the California Rules of Professional Conduct.

8. By delaying until November 3, 2010 to pay the refund of \$1,000.00 owed to BB since July 2005, Respondent willfully failed to refund promptly any part of a fee paid in advance which has not been earned, in violation of rule 3-700(D)(2) of the California Rules of Professional Conduct.

FACTS FOR CASE 09-O-13837-RAH:

9. On December 8, 2008, John Moore ("Moore") hired Respondent to defend criminal charges arising from driving under the influence of alcohol, and to represent Moore before the Department of Motor Vehicles ("DMV") concerning suspension of Moore's driver license. Respondent and Moore agreed in writing to a fixed fee of \$3,500.00 for both cases, with payments of \$400.00 every two weeks commencing December 17, 2008. Moore paid a total of \$2,500.00 by March 10, 2009, but paid nothing thereafter.

10. On January 23, 2009, both Respondent and Moore received written notices from the DMV that the hearing re Moore's driving privileges was scheduled for February 26, 2009. Respondent subsequently obtained a continuance to March 9, 2009, and notified Moore that Moore need not attend the hearing.

11. On March 9, 2009, Respondent failed to appear at the DMV hearing and did not call to explain his absence. Moore's driving privileges were suspended for one year. Respondent did not notify Moore of his failure to appear.

12. On March 10, 2009, both Respondent and Moore received the DMV's written Notification of Findings and Decision, which stated that Respondent had failed to attend the hearing and Moore's driving privileges had been suspended for one year.

13. Respondent had until March 24, 2009, to file an appeal with the DMV, but he took no action to get Moore's driving privileges restored. However, Respondent worked on Moore's criminal case on March 14 and March 16, 2009. On March 30, 2009, Moore terminated Respondent's employment and hired new counsel for both cases.

CONCLUSIONS OF LAW FOR CASE 09-O-13837-RAH:

14. By failing to attend the DMV hearing on March 9, 2009, and by failing to take any corrective action thereafter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.

DISMISSALS:

The State Bar respectfully requests the Court to dismiss the following alleged violation in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-10871-RAH	Three	Rule 4-100(B)(3)

MITIGATING CIRCUMSTANCES:

1. No Prior Discipline. At the time of the first violation on May 23, 2005, as set forth in Count One, Respondent had been an active member of the State Bar and had practiced law in California for more than 35 years with no prior discipline
2. Physical Disability. On February 28, 2009, Respondent fell at his home and suffered extensive damage to several teeth. Extensive oral surgery was performed on March 4, 2009, which included the extraction of two teeth, dental implants for five teeth, and a bone graft to his upper left jaw. Respondent was under the influence of Hydrocodone, a generic painkiller used to fill Vicodin prescriptions, from February 28, 2009 until March 13, 2009, and was unable to work during that period of 14 days. On March 14, 2009, he returned to the practice of law.

SUPPORTING AUTHORITY:

Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct provides that the willful failure to perform services in an individual matter not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.10 of the Standards for Attorney Sanctions for Professional Misconduct provides that the willful violation of any Rule of Professional Conduct not specified in a standard 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.

In *Gendron v. State Bar* (1983) 35 Cal.3d 409, attorney Gendron was a contractor for a county public defender to provide criminal defense services. He was found culpable of two counts of representing two codefendants in the same cases, where there were actual conflicts of interests and disclosures of confidential information, without obtaining the informed written consents of the four clients. The Supreme Court also held that section 6106 of the Business and Professions Code had been violated, an act of moral turpitude by gross negligence, because Gendron was motivated solely by his financial gain under his contract.

There were no aggravating factors. There was one mitigating factor, which was Gendron's 30 years of practice without prior discipline, and the violations had occurred during his 24th through 27th years of practice. The Supreme Court held that a public reprimand was sufficient.

Respondent is not charged with moral turpitude and his mitigation is stronger because he has more than 40 years of practice without prior discipline, and his violations occurred during his 36th and 40th years of practice.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was October 27, 2010.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 27, 2010, the costs in this matter are \$4,273.00. Respondent further acknowledges that, should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

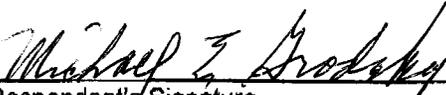
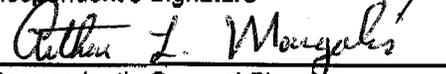
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In the Matter of MICHAEL EDWARD GRODSKY	Case number(s): 06-O-10871-RAH; 09-O-13837-RAH
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SIGNATURE OF THE PARTIES

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 Fact, Conclusions of Law and Disposition.

November 4, 2010 Date	 Respondent's Signature	Michael Edward Grodsky Print Name
November 6, 2010 Date	 Respondent's Counsel Signature	Arthur L. Margolis Print Name
November 8, 2010 Date	 Deputy Trial Counsel's Signature	Larry DeSha Print Name

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In the Matter Of MICHAEL EDWARD GRODSKY	Case Number(s): 06-O-10871-RAH; 09-O-13837-RAH
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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.

11-09-10
Date



Judge of the State Bar Court

RICHARD A. PLATEL

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 November 10, 2010, 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:

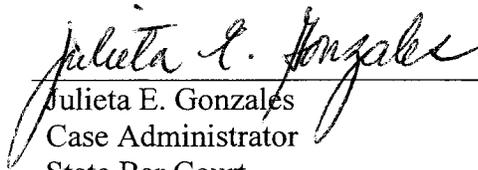
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR L MARGOLIS ESQ
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Ernest Larry DeSha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 10, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court