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

**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number (s) 07-O-10349</p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>NOV 10 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Paul J. Virgo 5200 West Century Blvd., Suite 345 Los Angeles, California 90045 310-642-6900</p> <p>Bar # 67900</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>PUBLIC REPROVAL</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Thomas E. Walley</p> <p>Bar # 46115</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 15, 1970.
- (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 16 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".



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- (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: 2011 and 2012.  
(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.

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- (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. (see page 8 of the attachment to stipulation)
- (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. Respondent has been discipline free for a lengthy period of time, in excess of forty years.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **~~Exoner~~ Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent's agreement to stipulate to public reproof in lieu of trial constitutes cooperation.
- (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.

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- (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 Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of one 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:**

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Attachment language (if any):



4. At the time of the employment, there were potential and actual conflicts of interest between Martin and Hoover, including not limited to the following conflicts:

- a. Martin and Hoover were in a debtor-creditor relationship;
- b. Hoover had potential claims against Martin for the services he provided and the expenses he incurred in starting up the business, and for loss of income;
- c. Martin and Hoover had differing opinions regarding the nature and amount of Hoover's ownership interest in Footprints at the time Martin, on behalf of Footprints, entered into the lease at the mall; and,
- d. Hoover was not a party to the lease, and as such, arguably had no legal standing to sue the lessor or the lessor's agent.

5. At the time Respondent accepted the dual representation of Hoover and Martin, there were actual or reasonably foreseeable adverse consequences to Hoover in pursuing his claim for damages with Martin, including but not limited to the following consequences:

- a. While not a party to the lease, Hoover was exposing himself to liability for Respondent's fees and costs, and the defendants' attorney fees if Hoover and Martin, on behalf of Footprints, did not prevail on their claims, as well as liability for malicious prosecution;
- b. Respondent may favor the interests of Martin over the interests of Hoover;
- c. Respondent may be required to withdraw from representing Hoover;
- d. Respondent may not be able to present appropriate claims or defenses for Hoover;
- e. Respondent's obligations to Hoover may be impaired as a result of his obligations to Martin;
- f. Respondent may be restricted from advocating Hoover's position forcefully for fear of losing the confidence of Martin;

g. Hoover could not claim the attorney-client-privilege in the event of litigation between Hoover and Martin.

6. At the time Respondent accepted the dual representation of Hoover and Martin, he did not provide Hoover a full, written disclosure regarding the potential and actual conflicts of interest and the actual and reasonably foreseeable adverse consequences to Hoover, as required by rules 3-310(C)(1) and 3-310(C)(2) of the Rules of Professional Conduct. Further, the fee agreement contained no provision regarding how any monies collected on their claims would be distributed between them, and no provision regarding how the responsibility for payment of Respondent's fees and costs would be divided between them.

7. On August 11, 2005, Respondent filed an action for fraud in the Orange County Superior Court entitled, *Footprints N More, Inc. v. Mission Viejo Associates, et al.*, case number 05CC09192 (the "Footprints action"). The named plaintiff, Footprints N More, Inc., was Martin's corporation. Hoover and Martin were not named as individual parties in the Footprints action.

8. By the time the Footprints action was filed, Hoover and Martin's personal relationship had deteriorated. After the Footprints action was filed, Martin solicited Hoover for payment of Respondent's fees.

9. In September 2005, Hoover and Martin met with Respondent to discuss Respondent's fees. Hoover communicated his concern that Martin was requesting money to pay Respondent's fees when he was not a named party in the Footprints action and not an owner of Footprints; and as such, he would not likely benefit from any recovery from the Footprints action. Respondent confirmed that Hoover would not be entitled to any recovery from the Footprints action. Respondent suggested that he could file a separate lawsuit for Hoover, but Hoover declined to pursue a separate lawsuit as he would not be able to recover attorney fees. Hoover believed that his damages would not exceed the amount of legal fees that he would incur in pursuing a separate lawsuit.

10. By November 2005, Hoover and Martin could not reach an agreement regarding the payment of Respondent's fees.

11. On November 21, 2005, Hoover received a letter from Respondent. In the letter, Respondent informed Hoover that Martin would not agree to Hoover's proposal that he receive 50% of

any recovery from the Footprints action. Respondent informed Hoover that he could no longer represent Hoover because of the conflict between Hoover and Martin and Respondent terminated his representation of Hoover. Shortly thereafter, Martin renewed her discussions with Hoover regarding the payment of Respondent's fees, and Hoover ultimately agreed to pay for Respondent's fees in exchange for a percentage of the recovery obtained in the Footprints action.

12. On December 10, 2005, Hoover and Martin entered into another fee agreement with Respondent. This time, Respondent addressed rules 3-310(c)(1), 3-310(c)(2) and 3-310(D) of the Rules of Professional Conduct in the agreement. Respondent expressly acknowledged in the agreement that there was a conflict of interest between Hoover and Martin in that they had differing opinions regarding the nature and amount of Hoover's ownership interest in Footprints at the time Martin entered into the lease at the mall. Respondent further stated in the agreement that he would be filing separate actions against the mall for Hoover and Martin.

13. The December 2005 fee agreement further provided, as follows:

- a. that any monetary damages recovered, including punitive damages, would be divided between them, 40% to Hoover and 60% to Martin and Footprints;
- b. that Hoover would be responsible for 40% and Martin would be responsible for 60% of Respondent's fees;
- c. that Hoover would be responsible for "...some amount of legal fees already incurred, somewhere in the 20% to 35% range. He will go through those previous bills and advise of his contribution. . .";
- d. that Hoover had the option of hiring his own attorney, but Respondent also recommended a particular law firm to represent Hoover; and,
- e. that any dispute between Hoover and Respondent regarding the representation would be resolved through binding arbitration.

14. At the time Respondent entered into the December 2005 fee agreement with Hoover, Respondent did not disclose to Hoover, in writing, the relevant circumstances and the actual and reasonably foreseeable adverse consequences to Hoover in continuing with the dual representation. Particularly, Respondent did not inform Hoover in writing that he would not be entitled to share in any

recovery by Martin in the Footprints action if he did not file a separate lawsuit against Simon. As such, Hoover did not give his informed written consent to the dual representation.

15. From January to August 2006, Hoover advanced \$29,954.44 to Respondent for the representation. Ultimately, Hoover, Martin and Respondent agreed not to file a separate lawsuit for Hoover and no separate lawsuit was filed. However, Hoover was not informed at the time this agreement was reached that Respondent and Martin were taking the position that Hoover could not share in any settlement obtained by Martin in the Footprints action if he did not file a separate lawsuit against the defendants.

16. With growing concern that Martin and Respondent would not honor the terms of the December 2005 fee agreement, Hoover ended his personal and romantic relationship with Martin in or about August 2006.

17. On September 28, 2006, Respondent terminated his representation of Hoover, before a mandatory settlement conference was to take place in the Footprints action in October 2006, but Respondent continued to represent Martin/Footprints in the Footprints action.

18. On or about October 30, 2006, Respondent settled the Footprints action for \$50,250. Respondent did not give Hoover the opportunity to participate in the settlement discussion or inform Hoover of the settlement reached. Hoover was entitled to \$20,100 from the settlement under the December 2005 fee agreement. However, Respondent maintained that Hoover was not entitled to any recovery from the settlement.

19. At the time Respondent accepted the dual representation of Hoover and Martin in June 2005, he did not provide Hoover with any written disclosure regarding Respondent's prior representation of Martin.

20. Respondent had a fiduciary duty of undivided loyalty to Hoover, including the duty to refrain from adverse representation, the duty to refrain from favoring Martin over Hoover, and the duty to refrain from acting adversely to a Hoover, as a former client, on any matter substantially related to the prior representation of Hoover. As such, Respondent should have disqualified himself from continuing to represent Martin/Footprints in the settlement of the Footprints action.

21. On May 4, 2007, Hoover's attorney, Kristine Karila ("Karila"), sent a letter to Respondent in which she requested the release of Hoover's original client file on his behalf.

22. On May 11, 2007, Respondent sent a letter to Karila. In the letter, Respondent denied the existence of a client file for Hoover, but acknowledged the existence of an extensive file regarding the Footprints action. In the letter, Respondent claimed that Martin refused to permit him to release that file to Karila, but that Respondent's firm had provided copies of all court documents and correspondence concerning the Footprints action to Hoover during the representation.

23. On May 14, 2007, Karila sent another letter to Respondent in which she requested that Respondent release Hoover's original client file, as Hoover had not received copies of all documents related to the representation. Respondent drafted a complaint for Hoover intended to allow him to pursue a recovery against the same named defendants within the Footprints action which was not filed.

24. Respondent did not release Hoover's original client file.

#### **Conclusions of Law**

25. By entering into the June and December 2005 fee agreements, Respondent wilfully accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client in willful violation of rule 3-310(C)(1) of the Rules of Professional Conduct.

26. By entering into the June and December 2005 fee agreements and by representing the interests of Hoover and Martin in the Footprints action, Respondent wilfully accepted or continued representation of more than one client in a matter in which the interests of the clients actually conflicted without the informed written consent of each client in violation of rule 3-310(C)(2) of the Rules of Professional Conduct.

27. By entering into the June 22, 2005 fee agreement with Hoover and Martin and by representing the interests of Hoover and Martin, on behalf of Footprints, in the Footprints action, Respondent wilfully accepted and continued representation of a client without providing written disclosure to the client that Respondent has or had a legal and professional relationship with another person or entity Respondent knew or reasonably should have known would be affected substantially by the resolution of the matter in willful violation of rule 3-310(B)(3) of the Rules of Professional Conduct.

28. Respondent breached his fiduciary duty of loyalty to Hoover by continuing to represent Martin on behalf of Footprints in the settlement of the Footprints action. By breaching his fiduciary duty of loyalty to Hoover, Respondent wilfully failed to support the laws of this state in willful violation of 6068(a) of the Business and Professions Code.

29. By not withdrawing from his representation of Martin/Footprints in the Footprints action, Respondent wilfully failed to withdraw from employment when Respondent knew or should have known that continued employment would result in violation of rule 3-700(B)(2) of the Rules of Professional Conduct.

30. By not releasing Hoover's original client file, Respondent wilfully failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

#### **PENDING PROCEEDINGS.**

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

#### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
07-O-10349	Five	Business and Professions Code section 6106
07-O-10349	Eight	Rule 4-100(B)(4) of the Rules of Professional Conduct
07-O-10349	Nine	Rule 4-100(A) of the Rules of Professional Conduct

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 3, 2010, the prosecution costs in this matter are approximately \$4,920.00. 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.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 1.3 of the Standards For Attorney Sanctions For Professional Misconduct provides that the primary purpose of discipline is the protection of the public, the courts and the legal profession;

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

Standard 1.6(a) provides that where two or more acts of misconduct occur within a single proceeding, the more severe sanction is to be imposed.

Standard 2.6(a) provides for disbarment or suspension depending upon the gravity of the offense or harm for a violation of Business and Professions Code section 6068(a).

Standard 2.10 provides for reproof or suspension according to the gravity of the offense or harm to the victim for a violation of rules 3-310 and 3-700 of the Rules of Professional Conduct.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. *In re Silverton* (2005) 36 Cal 4<sup>th</sup> 81, 91, 92. Although the standards are not mandatory, they may be deviated from where there is a compelling, well-defined reason to do so.

A public reproof, in conjunction with the probationary conditions set forth herein, is consistent with the above referred Standards. The parties submit that given Respondent's exemplary period of forty years of discipline free practice, and recognition of wrongdoing, together with his belated remorse and continuous candor and cooperation throughout this matter, that the stipulated discipline and probationary conditions in this matter are sufficient to assure that Respondent will conform his future conduct to ethical standards and therefore, protect the public, courts and legal profession.

#### **AGGRAVATING CIRCUMSTANCES.**

"Attorneys who undertake to represent parties with divergent interests owe the highest duty to each to make a full disclosure of all facts and circumstances which are necessary to enable the parties to make a fully informed decision regarding the subject matter of the litigation, including the areas of potential conflict and the possibility and desirability of seeking independent legal advice."<sup>1</sup> Respondent did not inform Hoover in writing of the potential or actual conflicts of interest or the actual and reasonably foreseeable adverse consequences to Hoover when he accepted the dual representation. He also did not inform Hoover in writing that he would not be entitled to share in any recovery by Martin in the Footprints action if he did not file a separate lawsuit against Simon. As such, Hoover did not give his informed written consent to the dual representation. By not providing Hoover a full, written disclosure regarding the potential and actual conflicts of interest and the actual and reasonably foreseeable adverse consequences to Hoover, Respondent violated rules 3-310(C)(1) and 3-310(C)(2).

Because Respondent did not provide Hoover with any written disclosure regarding Respondent's prior representation of Martin, at the time Respondent accepted the dual representation of Hoover and Martin in June 2005, Respondent violated rule 3-310(B)(3).

Also, Respondent intentionally breached his fiduciary duties to Hoover in violation of section 6068(a) of the Business and Professions Code, by continuing to represent Martin/Footprints after he terminated his representation of Hoover. Respondent was required to withdraw from his representation of Martin/Footprints

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<sup>1</sup> *Klemm v. Superior Court* (1977) 75 Cal.App.3d 893, 901.

under rule 3-700(B)(2), because his continued representation of Martin/Footprints would result in his breach of his fiduciary duties owed to Hoover.<sup>2</sup> Respondent also failed to release the client file, in violation of rules 3-700(D)(1).

After Hoover initiated arbitration with Respondent, the arbitrator conducted hearings for 16 days between March to September 2008. In the end, the arbitrator issued an award in favor of Hoover and concluded that Respondent breached his fiduciary duties to Hoover and failed to obtain appropriate conflict waivers from Hoover.

#### **MITIGATING CIRCUMSTANCES.**

Respondent has practiced law for forty years with no record of discipline.

#### **STATE BAR ETHICS SCHOOL.**

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

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<sup>2</sup> Abandoning an existing client to avoid the concurrent representation of adverse interests may itself breach the attorney's duty of loyalty. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App. 4th 1017, 1037 and 1044.)

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In the Matter of Thomas E. Walley	Case number(s): 07-O-10349
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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.

<u>Nov. 5, 2010</u> Date	<u>Thomas E. Walley</u> Respondent's Signature	<u>Thomas E. Walley</u> Print Name
<u>11/8/2010</u> Date	<u>Paul J. Virgo</u> Respondent's Counsel Signature	<u>Paul J. Virgo</u> Print Name
<u>November 8 '10</u> Date	<u>Hugh G. Radigan</u> Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

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In the Matter Of <b>Thomas E. Walley</b>	Case Number(s): <b>07-O10349</b>
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**ORDER**

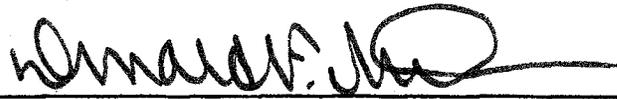
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.**

November 10, 2010  
Date

  
\_\_\_\_\_  
Judge of the State Bar Court

**DONALD F. MILES**

**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:

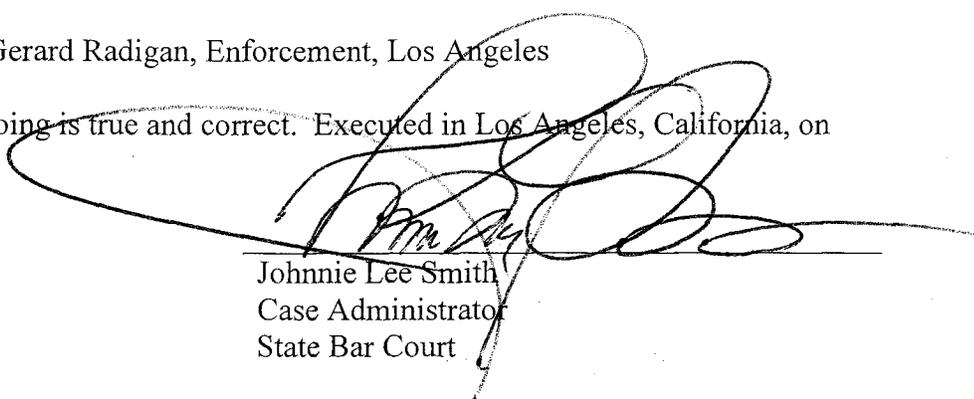
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO  
PO BOX 67682  
LOS ANGELES, CA 90067

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

Hugh Gerard Radigan, Enforcement, Los Angeles

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



Johnnie Lee Smith  
Case Administrator  
State Bar Court