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State Bar Court of California Hearing Department Los Angeles		kwiktag® 078 540 201 
Counsel For The State Bar Margaret P. Warren Bar # 108774	Case Number (s) 07-O-10912; Investigation Nos. 08-O-12182; 08-O-14340; 09-O-10215	(for Court's use) <div style="text-align: center;"> FILED MAR 16 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; font-size: 2em; font-weight: bold; margin-top: 20px;"> PUBLIC MATTER </div>
Counsel For Respondent Susan L. Margolis Bar # 104629	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: CARLOS E. CASTANEDA Bar # 140786 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 on **June 7, 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 **20** 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):

- 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: **Costs to be paid in equal amounts prior to February 1 for the following three (3) billing cycles following the effective date of the Supreme Court order**
(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
- (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.

Respondent has two prior disciplinary matters:

- (1) Case no. 96-O-08699: Respondent was publicly reprovved pursuant to a stipulation to a violation of rule 3-110(A) in one client matter. The misconduct occurred in 1995. The effective date of the public reprovval was August 14, 1999.
- (2) Case nos. 99-O-11745 & 00-H-13034: Respondent received a 30-day actual suspension for violations of rules 3-110(A), 3-700(D)(1), section 6068(m), and section 6068(i) in one client matter; and violations of sections 6103 and rule 1-110 for failure to comply with conditions of the public reprovval. The misconduct in the client matter occurred in 1998-1999; the failure to comply with reprovval conditions occurred in 1999-2000. The effective date of discipline was August 25, 2001.

- (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. **Respondent's improper withdrawal from the Hueso matter (case no. 07-O-10912) resulted in his clients losing their right to an appeal in their civil case. Respondent's failure to perform in the**

Flamenco matter (Investigation No. 08-O-12182) resulted in a default judgment being entered against Flamenco.

- (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. **The misconduct stipulated to herein involved multiple acts of wrongdoing, in four (4) client matters.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct 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

Respondent's misconduct was not due to intentional dishonesty or venality, nor was it motivated by personal enrichment.

Respondent entered into a pretrial stipulation as to facts and culpability pertaining to all charges of misconduct, thus saving the State Bar Court significant time and resources.

Respondent displayed candor, cooperation and remorse throughout the disciplinary proceedings, and a willingness to accept punishment and rehabilitate himself.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
 - 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 **three (3) 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 **nine (9) months**.
 - 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 checked="" type="checkbox"/> Medical Conditions | <input checked="" 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 951-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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):

The parties hereby stipulate to the submission of the following statement for the Court's consideration. Were the Respondent to testify under oath in this matter, his testimony would be consistent with the representations contained in the statement.

Since becoming a sole practitioner in 1995, Respondent delegated the day-to-day administration of his law practice to family members in order to keep overhead low. Respondent did not adequately train and supervise those individuals, and they lacked the necessary skills and knowledge to properly administer the practice. As a result, telephone messages from clients were not always conveyed to Respondent; court dates, appointments with clients, and work deadlines were not always properly calendared; and other, related tasks were not properly dealt with. Thus Respondent was at times unaware that his clients' needs and requests were not properly being taken care of. Respondent understands, however, that he was at all times responsible for the shortcomings of his office, and was at all times the only person ultimately responsible for, and answerable to, his clients.

Respondent has recently instituted corrective measures in his office and record-keeping procedures to avoid a reoccurrence of the same problems in the future. He has discharged all former staff and is revising his law office's procedures. Respondent has purchased and installed a new computer calendaring software system that he has personally been trained to use. He has instituted, and is now using, a double calendaring system; and he has installed a new telephone system that records all incoming telephone phone calls on both his voicemail system and on his computer. Respondent is now alerted by an e-mail each time a phone message is left by a client, and can retrieve phone calls from both his voicemail and his computer. Respondent has taken over sole responsibility for client relations, and no longer delegates this function to staff.

Respondent intends to make his practice more manageable in the future by accepting fewer cases and associating with other counsel to ensure that assistance will be available, if necessary, for Respondent to competently manage his caseload and properly represent the interests of all his clients. Respondent is now working on implementing a system to ensure that his clients are given written notice whenever significant developments arise in their matters.

Respondent has suffered physical and emotional problems that he believes significantly contributed to the conduct outlined in the stipulation. He had a long-standing problem with sleep deprivation which became increasingly severe in the late 1990's. Respondent did not seek medical attention for this problem until 2004, at which time he was diagnosed, after undergoing a series of tests, with sleep apnea. Respondent was prescribed a C-PAP machine in 2004, which he must use every night to get the deep sleep needed for normal functioning. The sleep apnea affected his work and daily functioning because the lack of sleep led to lethargy and exhaustion. The constant lack of adequate sleep and other personal stresses led in turn to bouts of depression, for which Respondent has sought counseling.

Respondent has volunteered considerable time to pro bono work in his community for many years. He has been very active in the Barrio Logan Community in San Diego, California, since his youth. His volunteerism and activism is focused on promotion of land use policies favoring housing and public facilities for low-income residents. He has been a volunteer, employee and Board Member of the Barrio Station Corporation since 1978. Since 2008, he has served on the "Barrio Logan Community Plan Update Stakeholders," a City of San Diego advisory committee, as Barrio Station's representative. Since 2000, he has also been active advising "Padres Unidos del Barrio," an organization on land use and low-income housing matters that has led to the creation of low-income housing projects and improved land use policies for the Barrio Logan Community. He volunteers an average of 10 to 20 hours per month to these causes.

In the Matter of
CARLOS CASTANEDA

Case number(s):
07-O-10912;
Investigation Nos. 08-O-12182; 08-O-14340; and
09-O-10215

Medical Conditions

- a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **two (2)** times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~days or months~~ **or one (1) year** or ~~the period of probation~~ until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

In the Matter of
CARLOS CASTANEDA

Case number(s):
07-O-10912;
Investigation Nos. 08-O-12182; 08-O-14340; and
09-O-10215

A Member of the State Bar

Law Office Management Conditions

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

In the Matter of
CARLOS CASTANEDA

A Member of the State Bar

Case number(s):

07-O-10912;

**Investigation Nos. 08-O-12182; 08-O-14340;
and 09-O-10215**

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

CARLOS E. CASTANEDA, No. 140786

CASE NUMBER(S): ET AL.

07-O-10912; [Investigation Nos. 08-O-12182; 08-O-14340;
09-O-10215]

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND
STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges filed in this matter on September 11, 2008 in Case No. 07-O-10912, and the facts and conclusions of law contained in this stipulation. The parties further waive the issuance of an amended Notice of Disciplinary charges relating to the investigation matters (investigation nos. 08-O-12182, 08-O-14340, and 09-O-10215) that are the subject matter of this stipulation, and also waive the right to a formal hearing on any charges not included in the pending Notice of Disciplinary Charges.

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 07-O-10912

FACTS

1. On March 10, 2001, Respondent was employed by Antonio Hueso in his capacity as president of USA Cab ("USA Cab"), Alfredo Hueso in his capacity as vice-president of USA Cab, and Francisco Nunez, an employee of USA Cab, to represent USA Cab and Nunez in a personal injury lawsuit entitled *Carmen Arce v. Francisco Nunez, et al.*, San Diego County Superior Court case no. GIC 762 370 (the "Arce case").
2. Respondent represented Nunez and USA Cab in the *Arce* trial, and on January 28, 2002, the jury returned a verdict against Nunez and USA Cab jointly and severally. Plaintiff's counsel was ordered to prepare a proposed judgment for the court.
3. On April 18, 2002, the court signed and filed the judgment in the *Arce* case. Plaintiff's counsel, however, did not serve Respondent with the executed judgment, as he was ordered to do.
4. On several occasions between May and July 2002, Alfredo and Antonio Hueso expressed to Respondent an interest in appealing the *Arce* case, and solicited Respondent's advice as to when any

appeal could be filed. Respondent, unaware of the fact that judgment in the *Arce* case had been filed on April 18, 2002, incorrectly advised the Huesos as to the deadlines for the filing of any appeal they might wish to pursue.

5. After the conclusion of the *Arce* trial on January 28, 2002, Respondent at no time followed up on the status of the judgment in the matter.

6. After the conclusion of the *Arce* trial on January 28, 2002, Respondent at no time filed a Notice of Appeal on behalf of the Huesos.

7. After the conclusion of the *Arce* trial on January 28, 2002, Respondent at no time made it clear to the Huesos that he had not been retained by them to represent USA Cab in any appeal of the *Arce* case, had not agreed to represent USA Cab in any appeal of the *Arce* case, and was not going to represent USA Cab in any appeal of the *Arce* case.

8. In July 2005, USA Cab hired another attorney to appeal the *Arce* case and for the first time learned that the time to file an appeal had expired.

CONCLUSIONS OF LAW

9. By failing to follow up on the status of the judgment in the *Arce* case; failing to file a Notice of Appeal on behalf of USA Cab in the *Arce* case; and failing to clearly and unequivocally inform the Huesos that he was not retained to represent USA Cab and would not represent USA Cab in any appeal the Huesos might choose to pursue in the *Arce* case, Respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

Investigation No. 08-O-12182

FACTS

10. In August 2003, Louis Flamenco ("Flamenco") hired and paid Respondent \$1,000.00 to represent him in connection with certain bills for medical treatment Flamenco had received while hospitalized in October 2002 at Sharp Chula Vista Medical Center ("Sharp Hospital"). Flamenco

contested the medical bills on the grounds that he did not authorize the medical treatment for which he was billed, and on the grounds that the treatment he received was unnecessary. By the time Flamenco hired Respondent, the medical bills in issue, totaling approximately \$40,000.00, had been sent by the medical providers to Progressive Management Systems (the "collection agency") for collection.

11. On September 12, 2003, the collection agency filed suit against Flamenco in the San Diego Superior Court, in the matter entitled *R.M. Galicia, Inc. dba Progressive Management Systems v. Louis Flamenco*, case no. GIC 817 776 (the "civil complaint"). On September 29, 2003, Flamenco paid to Respondent \$135.00, which was intended for the filing fee for the Answer to the civil complaint.

12. At no time did Respondent file an Answer to the civil complaint; obtain an extension of time to file an Answer to the civil complaint; or advise Flamenco of any deadline for filing an Answer to the civil complaint.

13. On February 9, 2004, a default judgment in the amount of \$48,359.59 was entered against Flamenco in the civil complaint (the "default judgment"). On March 5, 2004, an Abstract of Judgment was issued by the court; and the Abstract of Judgment was subsequently recorded on March 24, 2004, resulting in a lien on Flamenco's real property.

14. On May 11, 2004, Respondent entered into a written agreement with Flamenco to set aside the default judgment. Respondent also promised Flamenco that he would take steps to extinguish the lien on Flamenco's property, which Respondent did not believe to be legal.

15. Respondent failed to take any steps to set aside the default judgment or to extinguish the lien on Flamenco's property.

16. Flamenco terminated Respondent's services in February 2006. Respondent refunded the \$1,000.00 in fees and the \$135.00 filing fee to Flamenco.

17. In March 2006, Flamenco sued Respondent for legal malpractice.

LEGAL CONCLUSIONS

18. By failing to file an Answer to the civil complaint filed on September 12, 2003; failing to take any steps to vacate the default judgment entered on February 9, 2004; and failing to take any steps

to extinguish the lien on Flamenco's property resulting from the recording of the Abstract of Judgment on March 24, 2004, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Investigation No. 08-O-14340

FACTS

19. On April 21, 2008, Eloy Mora, Sr. ("Mora") employed Respondent and paid him \$400.00 of a \$1,000.00 flat fee to meet with Mora's son, Eloy Mora, Jr. ("Eloy"), who was incarcerated pending his criminal trial, for the purpose of giving legal advice to Eloy regarding Eloy's pending criminal case, and to report to Mora the events and outcome of Eloy's case. Eloy's first court date in the criminal matter was the following day, April 22, 2008. (Eloy was represented in court by a public defender.) On April 25, 2008, Eloy pled guilty to one felony count of receiving stolen property; the remaining charges against him were dismissed by the D.A.; and the court set a sentencing and probation hearing in Eloy's case for May 22, 2008.

20. At no time on or after April 21, 2008 did Respondent meet with, or otherwise contact, Eloy concerning his criminal case; give any legal advice to Eloy; or communicate in any manner with Mora concerning any aspect, including the outcome, of Eloy's criminal case.

21. Respondent refunded \$400.00 to Mora on December 15, 2008.

LEGAL CONCLUSIONS

22. By not meeting or otherwise communicating with Eloy; by not providing any legal advice to Eloy; and by not communicating in any manner with Mora about the proceedings and outcome of Eloy's criminal case, as he was hired to do, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Investigation No. 09-O-10215

FACTS

23. In 2007, Respondent represented Daniel Garrett in a civil matter that Garrett had filed *in propria persona* against his stepfather, entitled *Daniel James Garrett v. Eladio Vidal*, case no. GIC 877 742, filed in the San Diego Superior Court.

24. Respondent was able to obtain an increased settlement offer, from approximately \$2,000.00 to \$5,000.00, and Garrett agreed to the settlement.

25. On December 14, 2007, Respondent notified the court that Garrett's case had settled. The opposing counsel prepared a Release for Garrett's signature. When it was presented to him, Garrett did not sign the Release, telling Respondent that he now wanted more time to think about the settlement. Consequently, no settlement check was issued to Garrett, or to Respondent as Garrett's attorney of record.

26. Between December 14, 2007 and January 27, 2008, Garrett did not execute the Release or any other documents consummating the settlement of his civil case, and on January 27, 2008, the court dismissed Garrett's civil suit *without* prejudice, based on Respondent's December 14, 2007 representation to the court that Garrett's case had settled.

27. On and after December 14, 2007, the date he notified the court of the settlement of Garrett's civil case, Respondent knew that a dismissal of the civil suit was to be filed by the parties in 45 days, but if no dismissal was filed by the parties the court would on its own motion dismiss the civil suit.

28. At no time between December 14, 2007 and January 27, 2008 did Respondent take any steps to prevent the dismissal of Garrett's case once he realized that Garrett would not timely execute the settlement documents. Respondent failed to take any steps on or after January 27, 2008 to set aside the dismissal without prejudice of Garrett's civil suit, or conclude the settlement, or re-file the civil suit.

29. The State Bar has been informed by opposing counsel in Garrett's civil case that the settlement offer is still on the table.

LEGAL CONCLUSIONS

30. By not taking any steps to prevent the dismissal without prejudice of Garrett's civil case once it became apparent that the settlement would not be consummated, Respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to his client, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was March 5, 2009.

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-10912	1	rule 3-110(A), RPC
07-O-10912	2	rule 3-310(C)(2), RPC
07-O-10912	3	section 6068(m), Bus. & Prof. Code

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 5, 2009, the prosecution costs in this matter are \$5,511.00. 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.

DISCUSSION RE STIPULATED DISCIPLINE.

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct ("Standards") provides that the primary purposes of disciplinary proceedings 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. Standard 1.3 further provides that rehabilitation of a member is a permissible object of disciplinary sanctions.

Standard 2.4 (b) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Standard 1.7 (b) provides that a member who has a record of two prior impositions of discipline is found culpable of professional misconduct in a subsequent disciplinary proceeding, the degree of

discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court has reminded us that the Standards are entitled to great weight and the State Bar Court should follow their guidance wherever possible. *In re Robert Silvertown* (2005) 36 Cal.4th 81, 92. However, the Supreme Court also recognizes that the State Bar Court may deviate from the Standards where there exists grave doubt as to the propriety of applying them in a particular case. *Silvertown*, 36 Cal. 4th at p. 92. For example, deviation from the Standards may be appropriate where extraordinary circumstances exist or where the imposition of discipline called for by the Standards would be manifestly unjust.

In *In the Matter of Van Sickel* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994, the Review Department of the State Bar Court was ordered by the Supreme Court on remand “to reconsider the appropriate degree of discipline in light of the standards, and in so doing, to consider ‘any ground that may form a basis for an exception to the application [of the standards].’” Citing *Silvertown*, the Review Department stated:

We are obligated to afford “great weight” to the standards . . . although we believe that the standards do not mandate a specific discipline. Indeed, if the Supreme Court were of the view that the standards provide for mandatory disciplinary outcomes, it would have directed us to simply apply the specific discipline stated in the relevant standards, including standard 2.7 . . .

The court’s order is consistent with its long-held position that it is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222 [further citations omitted].) Following the Supreme Court’s lead, we recently observed in *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940, that “although the Standards were established as guidelines, ultimately, the proper recommendation of discipline rest[s] on a balanced consideration of the unique factors in each case. [Citations.]”

The parties submit that it would be manifestly unjust to apply Standard 1.7(b) in this matter without deviation. While Respondent’s conduct was improper, it was attributable in part to Respondent’s poor case management skills and misplaced reliance on untrained employees. The misconduct, however, was neither due to, nor motivated by, intentional dishonesty or venality on Respondent’s part. Respondent has since discharged his employees and embarked on implementing methods and technologies that he is personally able to understand and use in order to properly manage a law office.

The parties submit that the protection of the public, the courts and the legal profession, and the preservation of public confidence in the legal profession, will be served by the disposition in this matter, which focuses on the rehabilitation of Respondent through the imposition of a substantial period of actual suspension, coupled with a substantial period of probation. During the period of probation, Respondent will be required, among other things, to attend the State Bar’s Ethics School and Trust Account School (the latter for prophylactic purposes) and complete a Law Office Management Plan.

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. The MCLE credit for Ethics School will be in addition to Respondent's regular MCLE requirement.

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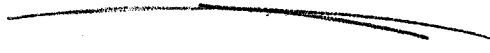
In the Matter of
CARLOS E. CASTANEDA

Case number(s):
07-O-10912;
Investigation Nos.
08-O-12182; 08-O-14340; 09-O-10215

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.

3/5/09
Date


Respondent's Signature Carlos E. Castaneda
Print Name

3/9/09
Date


Respondent's Counsel Signature Susan L. Margolis
Print Name

3/9/09
Date


Deputy Trial Counsel's Signature Margaret P. Warren
Print Name

(Do not write above this line.)

In the Matter Of
CARLOS E. CASTANEDA

Case Number(s):
07-O-10912;
Investigation Nos.
08-O-12182; 08-O-14340; 09-O-10215

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.)**

3-10-09

Date


Judge of the State Bar Court

RICHARD A. HONN

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 16, 2009, I deposited a true copy of the following document(s):

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

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:

**SUSAN LYNN MARGOLIS
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:

MARGARET WARREN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 16, 2009.



Tammy Cleaver
Case Administrator
State Bar Court