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State Bar Court of California
Hearing Department
Los Angeles

PUBLIC MATTER

Counsel For The State Bar	Case Number (s)	(for Court's use)
Kimberly J. Belvedere **State Bar of California** **1149 S. Hill St.** **Los Angeles, CA 90015** **(213) 765-1162** Bar # **251334**	**07-O-11532** **07-O-11957**	FILED OCT 13 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES kwiktag® 035 131 977
In Pro Per Respondent **Robert F. Zwierlein** **25761 Marguerite Pkwy.** **#101** **Mission Viejo, CA 92692** **(714) 420-6388** Bar # **138485**	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **STAYED SUSPENSION; NO ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: **Robert Frank Zwierlein** Bar # **138485** 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 **December 7, 1988**.

(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 11pages, 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.
☒ 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 two billing cycles subsequent to 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 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.

See attachment at page 9.

(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 at page 9.

(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.

See attachment at page 9.

(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 at page 9.

(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) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **12 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:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of **24 months**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

(1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(3) ☒ Within 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.

(4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(5) ☒ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason: .

(8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(9) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason:

(2) ☐ **Other Conditions:**

None.

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE: FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of: ROBERT FRANK ZWIERLEIN, Bar No. 138485

Case Nos.: 07-O-11532 & 07-O-11957

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-11532 (Nobles matter)

Statement of Facts

1. In October 2006 Respondent undertook representation of Anthony Nobles ("Nobles") for appeal of a matter entitled *Burrows v. Nobles*. On October 12, 2006, Respondent filed a notice of appeal in the Court of Appeal, Second Appellate District (case no. B194455), from a lower court's order granting summary judgment. On November 1, 2006, the Superior Court issued a default notice because the Case Information Statement had not been timely filed. Respondent received the default notice, which gave him 15 days to file the Case Information Statement, but he failed to file it and Nobles' case was dismissed on or about November 29, 2006. On December 15, 2006, Respondent moved to reinstate Nobles' appeal and the appeal was reinstated.

2. On December 20, 2006, the Superior Court issued a default notice for failure to file a designation of clerks and reporter's transcript. Respondent received the notice but failed to file the designation of clerks and reporter's transcript by the deadline. On January 18, 2007, Nobles' appeal again was dismissed, and Respondent moved to reinstate the matter for a second time.

3. On February 1, 2007, the court reinstated Nobles' appeal but ordered Respondent personally to pay sanctions of $1000.00 to the State Bar Client Security Fund within 15 days from the date of its order, among other things. The Appellate Court reported the sanction to the State Bar on or about February 5, 2007. However, Respondent failed to separately report the sanction to the State Bar.

4. Respondent's due date for payment of the $1000.00 sanctions was extended by the court until February 28, 2007, due to Respondent's illness. Respondent failed to pay the sanctions by that date, and did not pay it until mid-November 2007.

Conclusions of Law

5. By not reporting the appellate court sanctions to the State Bar, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent, in willful violation of Business and Professions Code section 6068(o)(3).

6. By failing to pay the court ordered sanction until several months past its due date, Respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

CASE NO. 07-O-11957 (Osmundsen matter)

Statement of Facts

7. On July 1, 2003, Respondent was employed by Amanda Osmundsen and her mother, Dianne Osmundsen ("the Osmundsens") to represent them in a personal injury matter on a contingent fee basis following an automobile accident . Respondent filed a complaint in their matter in November 2003 (*Osmundsen v. Locatell*, Los Angeles County Superior Court case no. KC043141).

8. On May 28, 2004, Respondent was served with interrogatories and requests for production as to each of the Osmundsens. Respondent met with the Osmundsens but did not provide discovery responses to defendants. On July 20, 2004, Respondent was served with a motion for an order compelling the Osmundsens to provide responses to this discovery, with a hearing set for September 15, 2004. Respondent did not oppose the motion, nor did he inform his clients of the pending motion to compel.

9. On September 15, 2004, the court held a hearing on the defense motion, which Respondent attended. The court ordered the Osmundsens to respond to provide discovery responses, and it ordered Respondent and plaintiffs to pay a $1000.00 sanction to defense counsel within 20 days. Respondent failed to inform the Osmundsens of the court's order, and neither Respondent nor his clients paid the court ordered sanction to defense counsel's attorneys within 20 days as ordered. It was not paid until December 17, 2004.

10. Respondent provided some responsive discovery pursuant to the September 15, 2004 Order, following hearing on the same date; however it was incomplete. On October 25, 2004, defendant served Respondent with a motion for an order compelling plaintiffs to provide further answers to requests for production of documents, and asking for sanctions. A hearing was set for December 17, 2004. Respondent failed to oppose the defense motion.

11. At the December 17, 2004 hearing, the court ordered Respondent and plaintiffs to provide the discovery responses no later than December 23, 2004. Respondent was present but he failed to inform the Osmundsens of the court's rulings and he did not provide supplemental discovery responses as ordered.

12. On November 12, 2004, defendant served Respondent with additional motions to compel production of discovery, which also sought sanctions. A hearing was noticed for January 31, 2005. Although Respondent received the motions and had knowledge of the hearing he failed to oppose the motions.

13. Respondent failed to attend the January 31, 2005, hearing. At the hearing, the court issued a further order that Respondent and plaintiffs answer discovery without objection within 10 days. The Court also ordered both plaintiffs and Respondent pay a $1045.20 sanction to defendant. The January 31, 2005, order was properly served on Respondent but he failed to inform the Osmundsens of the court's rulings. At

no time did the Osmundsens or Respondent on their behalf provide any supplemental discovery or pay the monetary sanction.

14. On February 14, 2005, defendant filed a motion for terminating sanctions. Respondent was served with the motion and knew of the February 23, 2005, hearing. Nevertheless he failed to inform his clients of the motion and he failed to provide a written opposition.

15. Respondent appeared at the February 23, 2005 hearing. The Court granted the defendant's motion for terminating sanctions against the Osmundsens and dismissed their case with prejudice. Respondent failed to inform the Osmundsens of the dismissal of their case.

16. On September 16, 2005, Respondent filed a motion to vacate the dismissal of the Osmundsens' case, again without informing the Osmundsens. The court denied Respondent's motion. Respondent did not inform the Osmundsens of the outcome until sometime in October 2005. On November 16, 2005, Respondent filed a Notice of Appeal.

17. During the time he represented them, the Osmundsens regularly communicated with Respondent. Prior to October 2005, Respondent repeatedly failed to inform the Osmundsens of various significant developments in their case, including his failure to comply with discovery requests, of the motions to compel discovery or the discovery sanctions awarded, of the dismissal of their case, or of the unsuccessful motion to vacate the court's ruling of dismissal until the following month.

Conclusions of Law

18. By failing to respond to discovery requests on several occasions, by failing to oppose defense motions to compel, by failing to appear in court to litigate against defense discovery motions, by failing to file an opposition to a defense motion for terminating sanctions, and by ultimately causing his clients' case to be dismissed through his actions and inactions, Respondent recklessly and repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

19. By failing to communicate the status of their case to his clients, and by failing to inform his clients of significant developments in their case, Respondent failed to respond promptly to reasonable status inquiries of a client, and failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

20. By failing to timely comply or to comply at all with the court's discovery orders and sanction orders, Respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code, section 6103.

PENDING PROCEEDINGS

The disclosure date referred to on page 2, paragraph A(7), was August 24, 2010.

ESTIMATED COSTS OF PROCEEDINGS TO DATE

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that, as of September 13, 2010, the prosecution costs in this matter are approximately $2915.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase.

AGGRAVATION

Harm: Respondent's misconduct resulted in the Osmundsens' lawsuit being dismissed with prejudice.

MITIGATION

No prior discipline: Respondent has been an attorney since 1988. At the time the misconduct began he had been an attorney for approximately 16 years. Moreover, as of the date of this stipulation Respondent has no prior record of discipline.

Candor/Cooperation: Respondent's willingness to enter into a pre-filing stipulation evidences a level of cooperation with the State Bar that is entitled to significant mitigation. Although the signed pre-filing stipulation was received one day late resulting in the filing of a Notice of Disciplinary Charges (NDC), Respondent has remained cooperative and agreed to the same disposition, including the increased costs to be assessed due to the stipulation now being executed following the filing of the NDC.

Emotional/Physical Difficulties: Respondent reports being hospitalized in 2002 for 10 days with a blood infection. While hospitalized he was diagnosed with diabetes, anemia, high blood pressure, sleep apnea and atrial fibrilation. For the next several years he suffered from poor health, and was on 11 medications including insulin and blood thinners. Due to pain resulting from peripheral neuropathy he was prescribed vicodine. In early 2006 he was again hospitalized for allergic reaction. Thereafter he was diagnosed with Adult Attention Deficit Disorder, and was placed on Vyvance. Respondent reports that Vyvance has enabled him to focus much better and he is no longer lethargic. He is also engaging in other therapies for pain such as meditation, diet and exercise and his overall health is much improved. He believes his health problems and associated medications directly contributed to if not caused his professional misconduct.

AUTHORITIES SUPPORTING DISCIPLINE

Standard 1.6(a) provides that where two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by the Standards, the sanctions imposed shall be the most severe of the different applicable sanctions.

Standard 2.4(b) calls for reproval or suspension for willfully failing to perform services, where it does not demonstrate a pattern of misconduct, depending on the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that a violation of Business and Professions Code, section 6068, shall result in disbarment or suspension, depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline as set forth in Standard 1.3.

Standard 2.10 calls for reproval or suspension, depending on the gravity of the offense, for willful violation of the Rules of Professional Conduct not otherwise specified in the Standards.

The court will look first to the Standards for guidance in determining what level of discipline to recommend. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090). The Standards are entitled to great weight and should be followed wherever possible. (*In re Silverton* (2005) 35 Cal.4th 81).

In the case of *In re Greenwood*, involving two matters for failure to perform resulting in dismissal of clients' lawsuits and failure to cooperate in State Bar proceedings, the attorney received 90 days actual suspension. ((Rev. Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831). However, in that case the attorney was found to have defaulted, and no mitigation was present. Also, there were two client matters dismissed, due to "effective abandonment," compared to a single one in the instant matter involving repeated discovery violations rather than abandonment. This matter also involves early, pre-filing, stipulation which affords Respondent much mitigation, rather than post-trial decision of *Greenwood*. No actual suspension is warranted. (*Accord, In re Aguiluz* (Rev. Dept. 1992) 2 Cal. State Bar Rptr. 32, 45-46 (attorney with no prior record and a single instance of client abandonment; discipline range is stayed suspension to 90 days actual).)

The State Bar and Respondent believe that based on the misconduct in the instant matter and applying the Standards and appropriate case law, especially considering early settlement, 12 months stayed suspension on the conditions outlined herein is an appropriate level of discipline.

/// END OF ATTACHMENT ///

(Do not write above this line.)

In the Matter of **Robert F. Zwierlein** **Bar No. 138485**	Case number(s): **07-O-11532** **07-O-11957**

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.

9/24/10 Date	Respondent's Signature	Robert F. Zwierlein Print Name
~~9/24/10~~ Date	Respondent's Counsel Signature	Print Name
9/24/2010 Date	Deputy Trial Counsel's Signature	Kimberly J. Belvedere Print Name

(Do not write above this line.)

In the Matter Of **Robert F. Zwierlein** **Bar No. 138485**	Case Number(s): **07-O-11532** **07-O11957**

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.

PAGE 5 - SECTION E.(5) - DELETE BOX CHECK.

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.)**

10-12-10
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 October 13, 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:

ROBERT F. ZWIERLEIN
ZWIERLEIN & ASSOCIATES
25761 MARGUERITE PKWY APT 101
MISSION VIEJO, CA 92692

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

Kimberly J. Belvedere, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 13, 2010.

Johnnie Lee Smith
Case Administrator
State Bar Court