

State Bar Court of California
Hearing Department
Los Angeles

ORIGINAL

<p>Counsel For The State Bar</p> <p>Djinna M. Gochis, Assistant Chief Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1000</p> <p>Bar # 108360</p>	<p>Case Number (s) 07-0-12927 and 08-0-13928</p>	<p>(for Court's use)</p> <p>FILED AUG 26 2009 <i>Y/C</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Victor H. Toscano 625 West Broadway Street Suite B Glendale, California 91204</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 80753</p> <p>In the Matter Of: VICTOR H. TOSCANO</p> <p>Bar # 807⁵83</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 **June 23, 1978**.
- (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 **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ costs added to membership fee for calendar year following effective date of discipline.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **three 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 **96-0-7111**
 - (b) ☒ Date prior discipline effective **October 19, 1997**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **accounting for performance**
 - (d) ☒ Degree of prior discipline **private reproof**
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline. **99-0-10273 (SO80259) was a failure to comply with conditions of the private reproof for which Respondent received a one year stayed suspension, two years probation.**
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

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

see page 8-9

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of **two (2) years**, 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:
- | | |
|---|---|
| <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:

- (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:**
- Respondent shall submit the issue of whether the fees paid by Uribe (\$3,500) and Arechiga (\$2,000) should or should not be refunded in whole or in part, to arbitration through the applicable local bar association(s) within thirty (30) days of the effective date of the Supreme Court order. Respondent shall provide proof, in writing, of his having submitted the matters to arbitration within ten (10) days thereafter, to the Office of Probation.**

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Attachment language (if any):

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ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: VICTOR H. TOSCANO

CASE NUMBER(S): 07-0-12927 and 08-0-13928

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.

07-0-12927 (Uribe)

1. On August 31, 2006, Respondent was employed to represent Virginia Uribe ("Uribe") with regard to the sale of her late parents' home and the distribution of its proceeds among Uribe and her siblings.
2. Uribe paid a \$50.00 consultation fee as well as an advance fee of \$3,500.00 which the Respondent denominated non-refundable. There was a written retainer agreement.
3. Uribe provided documentation related to the property.
4. In November 2006, Uribe was hospitalized. She requested that her daughter, Elizabeth, contact Respondent regarding the case. Respondent advised that someone had broken into his car and taken his briefcase with Uribe's documentation.
5. In December 2006, after her release from the hospital, Uribe met with Respondent and provided information/documentation related to the property again. He did not take any further steps to advance the matter.
6. On March 5, 2007, Uribe sent a letter to Respondent, which he received, terminating him and, in part, requesting an accounting and a refund.
7. Respondent did not believe he owed a refund, but did not provide an accounting as requested.
8. Uribe employed another attorney to assist her in her matter.

08-0-13928 (Arechiga)

9. On January 29, 2008, Ana Arechiga ("Arechiga") employed Respondent to represent her with regard to a loan made to her by Financial Plus Investment, secured by a deed of trust on her home. At the time Respondent was employed, Arechiga had been given notice of intent to seek foreclosure. Foreclosure was of great concern to Arechiga, but was not yet imminent when the Respondent was employed.

10. Respondent advised that his fee would be \$5,000.00. He denominated this fee as non-refundable. Arechiga immediately paid \$1,000.00 to get started. Arechiga paid a second \$1,000.00 on February 4, 2008. There was no written retainer agreement.
11. On February 20, 2008, Arechiga visited Respondent's office asking about the status of the case and to see paperwork that showed action on the case. At that juncture, Respondent did not provide anything to his client, although he represents that he met with Arechiga on several occasions and did some research on the claim and a strategic approach to the claim.
12. A week later, Arechiga telephoned Respondent and terminated his services. Arechiga orally requested an accounting of the work performed for her, and refund of the \$2,000.00 that she had paid Respondent. Respondent did not provide an accounting, although confirmed his position, in writing, that he had spent some 15 hours of research and preparation and that she was not entitled to a refund.
13. Arechiga employed a new attorney who successfully negotiated an agreement and averted foreclosure on her home.

Conclusions of Law

By his conduct in the **Uribe** matter (07-0-12927):

- Respondent failed to properly complete performance on the matter for which he was employed in willful violation of rule 3-110(A) of the Rules of Professional Conduct;
- Respondent failed to properly account for the fees he received in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

By his conduct in the **Arechiga** matter (08-0-13928):

- Respondent failed to properly account for the fees he received in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 6, 2009.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES/OTHER CIRCUMSTANCES BEARING UPON THE DISPOSITION.

Respondent has posited that as to the Uribe matter, he did a "lot of work" but because the file was taken out of his car, he has no documentation. He also did not report the theft to the police and has no documentation of this defense. He understands that he was not relieved, either of his obligation to account, nor of the obligation to follow up on the matter between December 2006 and March 2007, when he was ultimately terminated.

As to the Arechiga matter, Respondent has, since meeting with the State Bar's attorney provided some documentation of work he advises he did prior to his termination by that client, including a drafted, but unfiled complaint. Respondent advises that he was waiting for the filing fee. Believing that Respondent was not performing, Arechiga terminated him and hired a new attorney. Respondent understands that his letter to Ms. Arechiga, dated July 1, 2008, in response to her request, in which he advised that he has spent 15 hours of research and preparation, without any supporting documentation which he has now provided to the State Bar, was not a proper accounting.

Until recently, Respondent believed that what he was paid by both clients was, in effect, a non-refundable fee for which he did not have to account, even if the work was not actually performed. Respondent believed that anything he did, even if it did not actually accomplish a result for these clients (e.g. drafting a complaint, but not ultimately filing it) meant that there was not an obligation to account or to refund. After discussion with both the State Bar attorney and a State Bar Court Judge Respondent has come to understand that he did not have, in fact, a non-refundable fee, but an advanced fee for which an attorney must account. He has agreed to go to arbitration on both matters so that his clients can present their positions for refund and he can articulate his belief that the work he states he did on both matters earned all or portions of the sums paid by the clients and present his evidence of any work performed to an arbitrator.

Initially, Respondent was not responding to the State Bar, but since in or about April 2009, has been responsive, including attendance at the 20 day meeting and two extended discussions with a State Bar Court Judge at an Early Neutral Evaluation Conference for which he is being given some mitigation.

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.

AUTHORITIES SUPPORTING DISCIPLINE.

The *Standards for Attorney Sanctions for Professional Misconduct* apply in analyzing the best disposition to satisfy the protection of the public, the courts, the legal profession, as well as the maintenance of high professional standards and the preservation of public confidence as required by 1.3.

There is no doubt that this disposition deviates from specific standards, to wit, 1.7(b) which states that if the member has a record of two prior impositions of discipline as defined by Standard 1.2(f) unless the most compelling mitigation pertains, the degree of discipline shall be disbarment. It is arguable that two stipulated findings of 4-100(B)(3) raises standard 2.2(b) which by its terms calls for a three month actual suspension irrespective of mitigating circumstances where there is a mishandling of entrusted funds or any other 4-100 violation. Although advanced fees do not have to be held in trust under current California case law, they must be accounted for pursuant to case law under 4-100(B)(3). See, *In the Matter of Fonte* (Review Department 1994) 2 Cal. State Bar Ct. Rptr. 752

As to standard 2.2(b), there is an factual difference between mishandling of or failure to account for "entrusted" funds and the failure to account for an advanced fee as has occurred in these cases. The latter conduct, even with the uncompleted performance in Uribe, for purposes of this stipulation,

warrants less than actual time. As to standard 1.7(b), the second prior occurred ten years ago, the first more than ten years' ago. Combined with this fact is that the two particular matters, even if there is no compelling mitigation, did not cause ultimate serious harm to the clients' cases, although of course the necessity to seek other attorneys and the continued argument over what is or is not owed back to them would, caused inconvenience and frustration.

Given the totality of circumstances, the nature of the current conduct, the ten year ago priors, the protection of the public, and the integrity of the profession, as well as the permissible object of rehabilitation of the member appear to be addressed by this disposition at this time.

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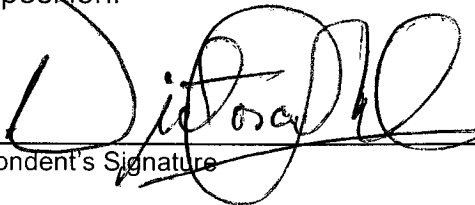
In the Matter of
VICTOR H. TOSCANO

Case number(s):
07-0-12927 AND 08-0-13928

SIGNATURE OF THE PARTIES

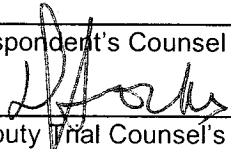
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

8-14-09
Date


Respondent's Signature

VICTOR H. TOSCANO
Print Name

8/18/09
Date


Respondent's Counsel Signature
Deputy Trial Counsel's Signature

Print Name

DJINNA M. GOCHIS
Print Name

(Do not write above this line.)

In the Matter Of
VICTOR H. TOSCANO

Case Number(s):
07-0-12927 AND 08-0-13928

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 caption page is corrected to reflect
respondent's bar number (80753).*

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify
the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies
or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The
effective date of this disposition is the effective date of the Supreme Court order herein,
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

8/25/09


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 August 26, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO 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:

**VICTOR H TOSCANO
625 W BROADWAY #B
GLENDALE, CA 91204**

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

DJINNA GOCHIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 26, 2009.



Tammy Cleaver
Case Administrator
State Bar Court