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**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>CYDNEY BATCHELOR Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 (415) 538-2204</p> <p>Bar # 114637</p>	<p>Case Number (s)</p> <p>07-O-13802-PEM [07-O-14220; 08-O-11444; 08-O-13966; 08-O-13993 09-O-10363]</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>Rm</i></p> <p>JUL 28 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>PETER J. CABBINESS, ESQ. 1840 Shaw Ave., Suite 105 PMB 24 Clovis, CA 93611 (559) 593-9278</p> <p>Bar # 185376</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>PETER J. CABBINESS</p> <p>Bar # 185376</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 December 9, 1996.
- (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 26 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."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2008.)

Actual Suspension



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- (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:
(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.
- (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. See attached
- (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 attached
- (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.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See attached
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None

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 attached
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. See attached
- (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. See attached
- (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

None

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 six (6) 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.

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- (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 type="checkbox"/> Law Office Management Conditions |
| <input 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:

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- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 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 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 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:** See attached

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PETER J. CABBINESS

CASE NUMBERS: 07-O-13802-PEM, ET AL.

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-13802 [TALAMANTEZ]: COUNTS 1-4

Count 1: Facts:

1. On October 5, 2005, Diana Talamantez (hereinafter, "Talamantez") hired respondent to probate her father's estate. Talamantez's father, Joe Peralta, passed away on September 12, 2005. Talamantez was the named Executor of her father's estate.
2. Respondent and Talamantez executed a written fee agreement on October 5, 2005. The fee agreement specified that the legal services to be provided were "representation with regard to the administration of Father's Estate."
3. Subsequently respondent failed to perform competently by failing to petition for probate in the *Peralta* matter in a timely fashion. Respondent delayed for over two years before filing the probate matter.
4. On July 17, 2007 respondent filed the Petition for Probate of Will and for Letters Testamentary, in the Matter of Joe Peralta (Estate), case no. 07CEPR00743, filed in Superior Court, County of Fresno. On January 22, 2008, the Court dismissed the probate matter at Talamantez's request, as Talamantez had already distributed the estate assets.

Count 1: Conclusions of Law:

By failing to file the petition for probate for two years, respondent recklessly failed to perform competently, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Count 2: Facts:

5. The factual allegations of Count One are hereby incorporated by reference.
6. Respondent failed to keep the client reasonably informed of significant developments in the matter in which respondent had agreed to perform legal services, by failing to inform the client of the following significant events:

<u>Approximate Date</u>	<u>Identification of Significant Development</u>
October 30, 2007	Court hearing in the <i>Peralta</i> probate matter.
January 28, 2007	Respondent did not give Talamantez advanced notice that he would not appear for his appointment with Talamantez.

Count 2: Conclusions of Law:

By failing to notify Talamantez of the above noted matters in a timely fashion, respondent failed to keep Talamantez reasonably informed of significant developments in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

Count 3: Facts:

7. The factual allegations of Counts One and Two are hereby incorporated by reference.
8. Talamantez paid respondent the following advanced attorney fees:

<u>Date</u>	<u>Amount</u>
10/0/05	\$750.00
10/14/05	\$500.00
11/21/05	\$300.00

9. Talamantez paid respondent an additional \$352.00 on December 12, 2005 for filing fees for the probate matter.
10. In September, 2007, Talamantez terminated respondent's services. Talamantez notified respondent that he was terminated during a conversation with respondent.
11. At the time respondent's employment terminated, respondent had not earned any portion of the advanced fee. Respondent owed Talamantez \$1,550 in fees.
12. Respondent agreed to return the \$1,550 advanced fee to Talamantez.
13. Thereafter, respondent failed to promptly refund any part of the unearned legal fee to Talamantez.

Count 3: Conclusions of Law

By failing to refund the \$1,550 advanced fee to Talamantez, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Count 4: Facts:

14. The factual allegations of Counts One through Three are hereby incorporated by reference.

15. On January 22, 2007, after the Court dismissed the probate matter at Talamantez's request, Talamantez spoke to respondent and requested the return of her file and papers.

16. Respondent subsequently failed to return Talamantez's file and papers in the *Peralta* matter.

Count 4: Conclusions of Law:

By failing to return Talamantez's file and papers to her, respondent failed to release promptly, upon termination of employment, to the client at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

CASE NO. 07-O-14220 [GOULD]: COUNTS 5-8

Count 5: Facts:

17. On February 20, 2007, Vicki Gould (hereinafter, "Gould") hired respondent to bring a lawsuit against Century Builders for fraud; against American Title for fraud; and against the City of Clovis for the wrongful taking (eminent domain) of twenty feet from her front yard.

18. Respondent failed to perform competently by failing to bring suit against any of aforementioned parties on behalf of Gould.

Count 5: Conclusions of Law:

By failing to bring suit on behalf of Gould, respondent failed to perform competently, in willful and/or reckless violation of Rules of Professional Conduct, rule 3-110(A).

Count 6: Facts:

19. The factual allegations of Count Five are hereby incorporated by reference.

20. Gould's husband is Ken Archer. Gould authorized Archer to communicate with respondent on her behalf.

21. After April 18, 2007, respondent received notice of, but willfully failed to respond to the client's reasonable status inquiries. These inquiries were as follows:

<u>Approximate Dates</u>	<u>Manner in Which Communication Was Made</u>
April 20, 2007	Phone call from Archer
May 16, 2007	Phone call from Archer
June 20, 2007	Phone call from Archer

Monthly thereafter	Phone call from Archer
Unknown	Approximately thirty scheduled office meetings that respondent cancelled without providing status to client.

22. Respondent failed to keep the client reasonably informed of significant developments in the matter in which respondent had agreed to perform legal services, as follows:

<u>Approximate Date</u>	<u>Identification of Significant Development</u>
Late 2007	Respondent vacated his offices and did not provide client with forwarding address or contact information.

Count 6: Conclusions of Law:

By failing to respond to Archer's monthly phone calls, made on behalf of Gould, and by failing to attend the scheduled office meetings, respondent failed to respond to the reasonable status inquiries in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

By failing to advise Gould and/or Archer when he vacated his offices, respondent failed to keep his client informed of a significant development in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

Count 7: Facts:

23. The factual allegations of Counts Five and Six are hereby incorporated by reference.

24. On February 22, 2007, Gould paid respondent the sum of \$3,500 as an advanced fee.

25. Respondent's employment terminated on late 2007, when Archer visited respondent's law offices only to find that respondent had vacated them. Respondent effectively withdrew from employment by abandoning the client matter.

26. At the time respondent's employment terminated, respondent had not earned any substantial portion of the advanced fee.

27. Respondent failed to refund any portion of the \$3,500 advanced fee to Gould.

Count 7: Conclusions of Law:

By failing to refund the \$3,500 advanced fee to Gould, respondent failed, upon termination of services to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Count 8: Facts:

28. The factual allegations of Counts Five through Seven are hereby incorporated by reference.

29. Respondent's employment terminated on late 2007, when Gould went to respondent's law offices only to find that respondent had vacated them. Respondent effectively withdrew from employment by abandoning the client matter.

30. Respondent failed to promptly return Gould's file to her upon termination of his services.

Count 8: Conclusions of Law:

By failing to promptly return Gould's file to her upon termination of his services, respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct.

CASE NO. 08-O-11444 [VANG]: COUNTS 9-12

Count 9: Facts:

31. On June 6, 2006, Wathao Vang (hereinafter, "Vang") employed respondent to represent him in his family law matters regarding child support. On November 2, 2006, the Department of Child Support Services filed a Notice of Motion for Supplemental Judgment and Health Care in *Shao x. Lor v. Teng Vang*, case no. 4CEFSO3312, filed in Superior Court, County of Fresno. On March 1, 2007, the Department of Child Support Services filed a Motion to Modify Child Support against Vang in *Wathao Vang v. Ge Xiong*, case no. 06CEFL02679 filed in the Superior Court, County of Fresno, with a hearing date of June 12, 2007.

32. The following legal services were not performed with competence:

<u>Approximate Date</u>	<u>Service</u>
October 12, 2007	Respondent failed to appear at the final hearing on the Motion to Modify Child Support from the filing of March 1, 2007. The matter had been continued from June 12, 2007 to September 21, 2007. Respondent notified the Court on September 21, 2007 and requested the continuance. The matter was continued to October 12, 2007 and respondent again failed to appear. The Court entered an Order against Vang in respondent's absence.

33. As respondent requested the continuance, he was obliged to ascertain the new date from the Court (the Court's minute order does not reflect that the document was served on the parties).

Count 9: Conclusions of Law:

By failing to ascertain the new hearing date after requesting a continuance on behalf of Vang, and by failing to appear on October 12, 2007 on behalf of Vang, respondent failed to perform, in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

Count 10: Facts:

34. The factual allegations of Count Nine are hereby incorporated by reference.

35. Respondent received notice of, but willfully failed to respond to the client's reasonable status inquiries. These inquiries were as follows:

<u>Approximate Dates</u>	<u>Manner in Which Communication Was Made</u>
June 2006 through 2008	<p>On several occasions, Vang set up an appointment with respondent, but respondent's office staff would cancel the appointment.</p> <p>Vang visited respondent's offices in March and April, July 2007, but was unable to meet with respondent.</p> <p>Vang also telephoned respondent and left messages on respondent's voice mail.</p>

36. Respondent failed to keep the client reasonably informed of the following significant developments in the matter in which respondent had agreed to perform legal services:

<u>Date</u>	<u>Identification of Significant Development</u>
September 21, 2007	Respondent failed to advise Vang that he, the respondent, would not be attending the Court hearing.
August 16, 2007 through September 27, 2007	Respondent failed to advise his client that he, the respondent, was suspended from the practice of law for this time period. <u>Approximate</u>
October 12, 2007	Respondent failed to advise Vang that he, respondent would not be attending the October 12, 2007 Court hearing. Vang attended. Vang required a translator. The Court entered an Order against Vang

Count 10: Conclusions of Law:

By failing to respond to the inquiries of Vang, during June 2006 through July 2008, respondent failed to respond to the reasonable status inquires of Vang, in willful violation of Business and Professions Code section 6068(m).

By failing to advise Vang of his suspension, his failure to appear at the October 12, 2007 hearing, and his failure to appear at the September 21, 2007 hearing, respondent failed to keep his client reasonably informed of significant developments in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

Count 11: Facts:

37. Respondent was not authorized to practice law from on August 16, 2007 through September 27, 2007.

38. Respondent was not authorized to practice law because respondent was involuntarily enrolled as an inactive member of the State Bar.

39. At all times pertinent hereto, respondent knew or reasonably should have known that he was not authorized to practice law.

40. Respondent violated Business and Professions Code section 6126 by advertizing or holding himself out as practicing or otherwise entitled to practice law, as follows:

<u>Approximate Date</u>	<u>Conduct</u>
September 21, 2007	Respondent represented to the Court that he was counsel for Vang in the pending family law matter and respondent represented that he needed a continuance of the September 21, 2007 hearing. Respondent did not notify the Court of his suspension of August 16, 2007 through September 27, 2007.

Count 11: Conclusions of Law:

By requesting the continuance in the Vang matter, respondent held himself to the court and his client as entitled to practice law and actually practiced law when he was not an active member of the State Bar in willful violation of Business and Professions Code, sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of Business and Professions Code section 6068(a).

Count 12: Facts:

41. The factual allegations of Counts Nine through Eleven are hereby incorporated by reference.

42. On June 12, 2006, Vang paid respondent the sum of \$2,870.00 as an advanced fee.

43. Respondent's employment terminated on October 12, 2007, when respondent failed to appear at Vang's Court hearing in his family law matter. Respondent effectively withdrew from employment by abandoning the client matter.

44. At the time respondent's employment terminated, respondent had not earned all of the advanced fee, and therefore owed the client a refund of at least \$1,400.

45. Therefore, respondent willfully failed to refund any part of the unearned legal fee.

Count 12: Conclusions of Law:

By failing to refund at least \$1,400 of the advanced fee to Vang, respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

CASE NO. 08-O-13966 [JONES]: COUNTS 13-15

Count 13: Facts:

46. On March, 2006, Garrison Jones (hereinafter, "Jones") employed respondent to review Jones's case regarding child support arrearage, prepare a motion to determine the child support arrearage, and represent Jones through court proceeding on the arrearage.

47. Respondent failed to file a lawsuit for the modification of child support arrearage for Jones. Respondent repeatedly assured Jones that he was filing suit on his behalf but failed to do so.

Count 13: Conclusions of Law:

By failing to file a lawsuit for the modification of child support arrearage for Jones, respondent failed to perform, in willful and/or reckless violation of rule 3-110(A) of the Rules of Professional Conduct.

Count 14: Facts:

48. The factual allegations of Count Thirteen are hereby incorporated by reference.

49. Respondent failed to keep the client reasonably informed of significant developments in the matter in which respondent had agreed to perform legal services as follows:

<u>Approximate date of significant development</u>	<u>Identification of significant development</u>
April 13, 2007	Respondent advised Jones that there was a court hearing on June 4, 2007. In fact, there was no such hearing, no documents were filed to bring this matter to a hearing. Jones went to Court to find no hearing and no respondent. Respondent failed to communicate that there was no hearing on June 4, 2007. (Respondent may have tentatively

	requested a court setting for this date but respondent failed to follow through and file the appropriate pleadings for a court hearing).
Mid-June, 2007	Respondent returned Jones's phone calls made after the June 4, 2007 non-court appearance and set an appointment with Jones for July 24, 2007. Jones appeared for the appointment (a sixty mile round trip drive for Jones) but respondent was not in attendance. Respondent failed to advise Jones in a timely fashion that respondent would not be able to complete the July 24, 2007 appointment.
August 1, 2007	Respondent falsely advised Jones that the matter was on for a court hearing, but respondent didn't know the exact date of it yet. Respondent failed to advise Jones that in fact there was no court hearing.
August 1, 2007	Respondent vacated his law offices at 2014 Tulare Street in Fresno, California, and terminated his phone service to number (559) 579-1057 and failed to advise Jones of his relocation. Jones found respondent by contacting the Fresno County Bar Association.
September, 2007	Respondent relocated to 558 N. Palm Avenue in Fresno and then vacated the Palm Avenue address. Respondent failed to promptly advise Jones when he vacated the Palm Avenue address and failed to provide Jones with additional contact information. Respondent did not provide contact information to Jones until October, 2007. After obtaining respondent's phone number from the Fresno County Bar association, Jones had left a message on the new number. In response, he received a call by "Lupe" who identified herself as respondent's new secretary Lupe gave Jones the 558 N. Palm Avenue address in Fresno, but when Jones went there to see respondent, the offices were vacated.
October 10, 2007	Respondent scheduled an appointment with Jones for this date. Once again, Jones made a sixty mile round trip to respondent's office. Shortly before the scheduled appointment, respondent cancelled it (via cell phone). Respondent failed to inform Jones in a timely manner of his inability to attend the scheduled meeting.
June 30, 2008	On June 30, 2008 respondent told Jones that there was a hearing in his case scheduled for July 31, 2008 at nine a.m. in Dept. 90 at the Fresno Superior Court. On July 31, 2008, a child called Jones to advise Jones that respondent could

	not make it to the hearing due to respondent's wife illness. In fact, there was no matter on calendar for Jones on that date. Respondent had not filed any pleadings on behalf of Jones. Respondent failed to communicate to Jones that no hearing had in fact been scheduled.
August 4, 2008	Respondent vacated his law offices at 2377 W. Shaw Avenue and thereafter failed to notify Jones of his whereabouts or provide Jones with updated contact information.

Count 14: Conclusions of Law

By failing to keep Jones informed of the aforementioned significant developments in a matter in which respondent agreed to perform legal services, respondent failed to communicate, in willful violation of Business and Professions Code section 6068(m).

Count 15: Facts:

50. The factual allegations of Counts Thirteen and Fourteen are hereby incorporated by reference.

51. The client paid respondent the following advanced attorney fees:

<u>Date</u>	<u>Amount</u>
March, 2006	\$500.00
April 12, 2006	\$450.00
November 22, 2006	\$300.00
November 29, 2006	\$300.00

52. The client paid respondent the following advanced costs:

<u>Date</u>	<u>Amount</u>
October 4, 2006	\$190.00 (for filing fee)

53. Respondent's employment terminated on July 31, 2008. Respondent effectively withdrew from employment by abandoning the client matter.

54. At the time respondent's employment terminated respondent had not earned any substantial portion of the advanced fee or costs.

55. Thereafter, respondent willful failed to refund any part of the unearned legal fee and

55. Thereafter, respondent willful failed to refund any part of the unearned legal fee and unearned cost.

Count 15: Conclusions of Law:

By failing to refund \$1,740.00 to Jones, respondent failed to refund the unearned legal fees and unearned costs, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

CASE NO. 08-O-13993 [KHACHATRYAN]: COUNTS 16-18

Count 16: Facts:

56. The name of the client in this matter is Gurchen Hrantovich Khachatryan (hereinafter, "G. Khachatryan"). G. Khachatryan was assisted by his brother, Artashes Khachatryan (hereinafter, "A. Khachatryan").

57. The Khachatryans hired respondent on March 28, 2008.

58. The Khachatryans hired respondent to represent G. Khachatryan in G. Khachatryan's immigration matter, to appeal the adverse ruling of the Board of Immigration Appeals, dated March 17, 2008, *In re: Gurchen Hrantovich Khachatryan, In Removal Proceedings*, case number A96-345-793. The March 17, 2008 ruling of the Board of Immigration Appeals denied G. Khachatryan's appeal of the original January 10, 2008 decision of the immigration judge. The original January 10, 2008 decision of the immigration judge denied G. Khachatryan's motion to reopen based upon ineffective assistance of counsel.

59. On March 28, 2008, respondent advised A. Khachatryan that he would appeal G. Khachatryan's case in federal court within one week. On April 4, 2008, respondent advised A. Khachatryan that he would file his brother's appeal with the Board of Immigration Appeals.

60. The following legal services were not performed with competence:

<u>Approximate Date:</u>	<u>Legal Service:</u>
April 2, 2008- April 14, 2008.	Failure to file an appeal on behalf of G. Khachatryan

Count 16: Conclusions of Law

By failing to file an appeal on behalf of G. Khachatryan, respondent failed to perform, in willful and/or reckless violation of rule 3-110(A) of the Rules of Professional Conduct.

Count 17: Facts:

61. The factual allegations of Count Sixteen are hereby incorporated by reference.

62. A. Khachatryan initially contacted respondent on March 28, 2008, on behalf of his brother, G. Khachatryan. At that time, A. Khachatryan advised respondent that G. Khachatryan was scheduled to be deported on April 17, 2008.

63. A. Khachatryan was authorized to communicate with respondent on behalf of G. Khachatryan.

64. Respondent received notice of, but willfully failed to respond to the client's reasonable status inquiries. The inquiries were as follows:

<u>Approximate Dates of Inquiries</u>	<u>Manner in which communication was made</u>
April 7, 2008	Phone calls from A. Khachatryan to respondent's office.
April 8, 2008	Phone calls from A. Khachatryan to respondent's office and respondent's residence.
April 9, 2008	Phone calls from A. Khachatryan to respondent's office
April 11, 2008	Phone calls from A. Khachatryan to respondent's office

Count 17: Conclusions of Law

By failing to respond to A. Khachatryan's phone calls on behalf of G. Khachatryan, respondent failed to respond to the reasonable status inquiries of his client in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

Count 18: Facts:

65. The factual allegations of Counts Sixteen and Seventeen are hereby incorporated by reference.

66. A. Khachatryan paid respondent the following advanced attorney fee:

Date	Amount
April 2, 2008	\$2,500

67. Respondent's employment terminated in the following manner: G. Khachatryan was deported on April 17, 2008 and respondent effectively withdrew from employment by abandoning the client. At the time respondent's employment terminated respondent had not earned any substantial portion of the advanced fee.

68. Thereafter, respondent willfully failed to refund any part of the unearned fee.

Count 18: Conclusions of Law

By failing to refund the \$2,500 to A. Khachatryan, respondent failed, upon termination of his services, to refund promptly a fee paid in advance that he had not earned, in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

CASE NO. 09-O-10363 [MARK CABBINESS]: COUNTS 19-22

Count 19: Facts:

69. On July, 2007, Mark and Pamela Cabbiness ("clients") hired respondent to bring a lawsuit on their behalf against the person who sold them a motor vehicle, for alleged fraud and violations of the purchase agreement. Mark Cabbiness is respondent's half-brother.

70. Respondent and the clients executed a written fee agreement in February, 2008.

71. On February 25, 2008, respondent filed a lawsuit on behalf of the clients, entitled *Mark A. Cabbiness and Pamela Cabbiness vs. Chris Kane*, case no. 37-2008-00062389-CU-FR-EC filed in Superior Court, County of San Diego.

72. Thereafter, respondent failed to perform competently by failing to serve the lawsuit on the named defendants and failing to pursue the claim.

73. On November 25, 2008, the Court dismissed the lawsuit after respondent notified the court that the matter was settled. In fact, the clients did not agree to settle the lawsuit or dismiss it, and were unaware that the lawsuit was dismissed at that time.

74. Respondent failed to perform by notifying the Court that the matter had settled when in fact the clients did not agree to settle the lawsuit or dismiss it.

Count 19: Conclusions of Law:

By failing to serve the lawsuit on the named defendants and pursue the lawsuit, and by dismissing the lawsuit without his client's consent, respondent willfully, recklessly, or repeatedly failed to perform competently, in violation of rule 3-110(A) of the Rules of Professional Conduct.

Count 20: Facts:

75. The factual allegations of Count Nineteen are hereby incorporated by reference.

76. Respondent failed to keep the client reasonably informed of the following significant developments in the matter in which respondent had agreed to perform legal services:

<u>Approximate date of significant development:</u>	<u>Identification of Significant development:</u>
February 2008-November, 2008	Respondent's failure to serve the lawsuit on the defendants.
November 25, 2008	Respondent's failure to inform the client of the Court's dismissal of the lawsuit as requested by respondent.

Count 20: Conclusions of Law:

By failing to advise Pam and Mark Cabbiness of his dismissal of their lawsuit suit, respondent failed to keep his clients reasonably informed of significant developments in a matter in which he agreed to perform legal services, in willful violation of Business and Professions Code section 6068(m).

Count 21: Facts:

77. The factual allegations of Counts Nineteen and Twenty are hereby incorporated by reference.

78. The car involved in the lawsuit was a 1969 Plymouth Roadrunner, VIN # RM21H9G268247.

79. On March 1, 2008, respondent entered into a written agreement to purchase the same vehicle, and acquired the 1969 Plymouth Roadrunner, VIN # RM21H9G268247, from the clients.

80. The written purchase agreement specified that the purchase amount was \$12,312.00. The payments were to be made in the sum of \$544.42 per month, due by the 15th of each month. The clients were to continue to pay for the car insurance until the loan was paid in full. If the loan was delinquent three or more months, the auto would physically revert to the possession of the clients, who reside in Idaho.

81. Respondent entered into a business transaction with his clients when he entered into the purchase agreement and acquired the 1969 Plymouth Roadrunner, VIN # RM21H9G268247, from the clients.

82. The transaction or acquisition and its terms were not fair and reasonable to the clients because there were no terms to address the pending lawsuit, *Mark A. Cabbiness and Pamela Cabbiness vs. Chris Kane*, case no. 37-2008-00062389-CU-FR-EC and which party had authority to make decisions in the pending lawsuit involving the 1969 Plymouth Roadrunner.

83. The transaction or acquisition and its terms were not fair and reasonable to the clients, because respondent also altered the vehicle by having engine work completed on the vehicle. This compromised the pending lawsuit. The terms of the agreement did not specify if respondent had authority to alter the vehicle while it was in his possession and the lawsuit was still pending.

84. Respondent did not advise the clients, in writing, that they could seek the advice of an independent lawyer of their choice, prior to entering into the agreement to sell the vehicle to respondent.

85. Respondent did not give the clients a reasonable opportunity to seek that advice.

86. Respondent eventually defaulted in his payments and the clients reacquired the vehicle and sold the car at a loss.

Count 21: Conclusions of Law:

By failing to advise the clients in writing that they had the opportunity to seek another attorney's opinion regarding the purchase of the vehicle; and by failing to choose terms that were fair and reasonable to address the authority in the pending lawsuit and the authority to alter the car during the pending lawsuit, respondent willfully violated rule 3-300 of the Rules of Professional Conduct.

Count 22: Facts:

87. The factual allegations of Counts Nineteen through Twenty-One are hereby incorporated by reference.

88. Respondent's employment terminated on November, 2008, when respondent dismissed the clients' suit without the clients' consent.

89. On November 14, 2008, attorney Patricia Evans, on behalf of Mark and Pam Cabbiness, wrote and sent a letter to respondent. In her November 14, 2008 letter, Patricia Evans requested that respondent provide the clients' file in the above-mentioned lawsuit, as well as all client papers and property, including papers for a prior representation on a criminal matter for Mark Cabbiness and the papers on respondent's efforts to obtain a loan modification for Mark and Pam Cabbiness. Mark and Pam Cabbiness were entitled to receive the requested materials.

90. Respondent received the November 14, 2008 letter.

91. Respondent willfully failed to promptly comply with the request for the files.

Count 22: Conclusions of Law:

By failing to return the clients' papers and files regarding the various legal matters, respondent failed, upon termination of employment, to return the client's papers and property, in willful violation of rule 3-110(D)(1) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was July 15, 2010.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards for Attorney Sanctions for Attorney Discipline, standards 1.2(b)(ii), 1.2(b)(iii), 1.2(b)(iv), 1.2(e)(i), 1.2(e)(iv), 1.3, 1.4(c), 1.6(a), 2.4(b), 2.6(a), 2.8, and 2.10.

AGGRAVATING CIRCUMSTANCES.

Dishonesty: During the course of applying for the State Bar Court's Alternative Discipline Program ("ADP), respondent misrepresented to the ADP judge that he had paid restitution when he had not done so.

Multiple Acts of Misconduct: As set forth herein, respondent committed 22 acts of misconduct in six different client matters.

Harm: *Gurgen Khachatryan's* brother, A. Khachatryan, was deported without respondent filing an appeal on his behalf. *Mark and Pam Cabbiness* suffered significant harm because after respondent defaulted on the loan, Mark/Pam reacquired the car and sold it at a loss for which respondent did not reimburse them. Thereafter, Mark/Pam hired an attorney and obtained a civil judgment against respondent in the approximate amount of \$11,000.00 plus interest, and respondent has not satisfied the judgment or reimbursed them for the attorney's fees.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although the conduct stipulated to herein is very serious, it should be noted that respondent has no prior record of discipline since being admitted to practice in 1996, and the first act of misconduct herein did not occur until 2006.

Physical problems: Respondent has provided to the State Bar documentary proof that at the time of the misconduct herein, he suffered from severe heart problems.

Family problems: Respondent has provided to the State Bar documentary proof that at the time of the misconduct herein, his wife was being treated for breast cancer.

Financial problems: Respondent has provided to the State Bar documentary proof that at the time of the misconduct herein, he was suffering severe financial problems.

Cooperation with the State Bar: Respondent has cooperated with the State Bar by entering into this stipulation as to facts, conclusions of law and disposition.

STATE BAR ETHICS SCHOOL.

Insofar as 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.

FINANCIAL CONDITIONS, RESTITUTION.

Respondent waives any objection to payment by the State Bar Client Security Fund upon a claim for the principal amount of restitution set forth below:

Diana Talamantez, or the Client Security Fund if it has paid, in the principal amount of \$1550.00, plus interest at the rate of 10% per annum from September 1, 2007, until paid in full and furnish evidence of restitution to the Officer of Probation.

Vicki Gould, or the Client Security Fund if it has paid, in the principal amount of \$3500.00, plus interest at the rate of 10% per annum from January 1, 2008, until paid in full and furnish evidence of restitution to the Officer of Probation.

Garrison Jones, or the Client Security Fund if it has paid, in the principal amount of \$1740.00, plus interest at the rate of 10% per annum from August 1, 2008, until paid in full and furnish evidence of restitution to the Officer of Probation.

Gurgen Khachatryan, or the Client Security Fund if it has paid, in the principal amount of \$2500.00, plus interest at the rate of 10% per annum from May 1, 2008, until paid in full and furnish evidence of restitution to the Officer of Probation.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Conditional Restitution: Respondent hereby agrees to write to Wathao Vang (hereinafter, "Vang") within ninety (90) days from the effective date of the Supreme Court order in this case regarding Vang's outstanding dispute with respondent regarding the \$2870.00 in advanced fees that Vang paid to respondent and which respondent has not refunded. In the letter, respondent is required to offer to initiate and pay the fees for fee arbitration upon Vang's request. Respondent is to send the letter to Vang at the last known address that respondent has for Vang by certified mail, return receipt requested. Respondent is to provide a copy of the letter, together with proof that he has sent the letter to Vang by return receipt requested, to the Office of Probation with respondent's quarterly written report next due.

If Vang does not request fee arbitration within six (6) months from the date respondent sent the above letter to him, then respondent shall perform a good faith search to locate him in a manner that is acceptable to the Office of Probation, and shall so certify with his written quarterly report next due. Upon such notification by respondent that Vang has not requested fee arbitration, and that he has been unable to locate Vang despite a good faith search, then this condition shall be deemed satisfied.

If Vang requests respondent to initiate fee arbitration, then respondent shall initiate fee arbitration and pay the costs or expenses associated with the fee arbitration, within sixty (60) days of Vang's request, and shall provide satisfactory proof thereof to the Office of Probation with respondent's quarterly written report next due. Respondent further agrees to participate in fee arbitration and to abide by the final fee arbitration order if any there be. Respondent shall provide a copy of the final written fee arbitration order, and satisfactory proof that he has

complied with the order, to the Office of Probation within thirty (60) days of the effective date of the order.

Respondent understands and agrees that his failure to write the letter to Vang and send it by certified mail, return receipt requested; or his failure to initiate, pay for or participate in fee arbitration upon Vang's request; or his failure to abide by the final fee arbitration order if any there be; or his failure to provide to the Office of Probation the satisfactory proof required herein, may constitute a violation of this stipulation and of his probation.

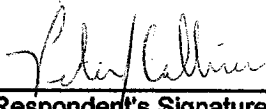

Reports to Office of Probation: Respondent's duty to file timely reports with original signatures is non-delegable. Facsimile transmission will not satisfy any reporting requirement. The Office of Probation does not have the authority to modify conditions of probation.

(Do not write above this line.)

In the Matter of PETER J. CABBINESS	Case number(s): 07-O-13802-PEM, ET AL.
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SIGNATURE OF THE PARTIES

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

<u>7/16/10</u> Date	 Respondent's Signature	<u>PETER J. CABBINESS</u> Print Name
<u>N/A</u> Date	<u>Respondent's Counsel Signature</u>	<u>N/A</u> Print Name
<u>7/21/10</u> Date	 Deputy Trial Counsel's Signature	<u>CYDNEY BATCHELOR</u> Print Name

(Do not write above this line.)

In the Matter Of PETER J. CABBINESS	Case Number(s): 07-O-13802, ET AL.
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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.

On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(ii) is deleted.

On page 4 of the stipulation, an "X" is inserted in the box next to paragraph E.(1).

On page 21 of the stipulation, in the paragraph under the heading entitled "Count 22: Conclusions of Law:", "rule 3-110(D)(1)" is deleted, and in its place is inserted "Rule 3-700(D)(1)".

On page 23 of the stipulation, the following paragraph is inserted immediately under the heading entitled "FINANCIAL CONDITIONS, RESTITUTION":

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

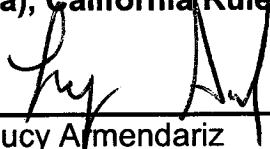
The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The**

(Do not write above this line.)

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.)

July 28, 2010

Date



Lucy Armendariz
Judge of the State Bar Court

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 San Francisco, on July 28, 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 San Francisco, California, addressed as follows:

**PETER J. CABBINESS
LAW OFFICE OF PETER JASON CABBINESS
1840 SHAW AVE STE 105
PMB 24
CLOVIS, CA 93611**

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 28, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court