

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004  Bar # 194283	<b>Case Number(s):</b> 07-O-13993 08-O-12644 08-O-14348 08-O-14464 09-O-11082 09-O-11415 09-O-13013 09-O-14472 10-O-01319 10-O-02116	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <b>SEP 29 2011</b>  STATE BAR COURT  CLERK'S OFFICE  LOS ANGELES   <b>PUBLIC MATTER</b> </div>
<b>Counsel For Respondent</b>  Arthur L. Margolis MARGOLIS & MARGOLIS, LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996  Bar # 57703	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>EMILIO N. FRANCISCO</b>  Bar # 69900  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 November 30, 1976.
- (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 18 pages, not including the order.



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012 and 2013. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are 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 See Stipulation Attachment, section "B", page 16, paragraph 1.
  - (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.
- (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. See Stipulation Attachment, section "B", page 16, paragraph 2.
- (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.
- (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 Stipulation Attachment, section "C", page 16, paragraph 1.
- (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:**

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 four (4) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of nine (9) months.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input 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 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 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason:

- (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:**

## ATTACHMENT TO

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

**IN THE MATTER OF:**     EMILIO N. FRANCISCO

**CASE NUMBER(S):**     07-O-13993; 08-O-12644; 08-O-14348; 08-O-14464;  
                                 09-O-11082; 09-O-11415; 09-O-13013; 09-O-14472;  
                                 10-O-01319; 10-O-02116

**A.     FACTS AND CONCLUSIONS OF LAW.**

EMILIO N. FRANCISCO ("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*.

Background Information Relevant to All Counts:

1.     Respondent's firm provided debt negotiation/reduction services. In general terms, the written retainer agreement with respondent's clients was that the clients agreed to pay 10% of the total debt to be negotiated, plus earned fees of 15% of the amount by which the debt was reduced at the time of settlement. A projected monthly payment schedule was provided, the firm's 10% fee was to be paid to the firm from those payments prior to any portion of the clients' payments being used to negotiate and resolve the debts. The contingency portion of the fee was to be paid to the firm after a particular debt was negotiated. Further, if it became necessary to respond to a lawsuit in another state, the firm charged an additional \$350 for the work of the out-of-state attorney. The client was free, however, to hire any attorney the client chose in the other state.

2.     The retainer also stated:  
"Client understands that contracted credit accounts will continue to accrue interest until the accounts are settled. Creditors may impose other penalties as a result of delinquent payments not excluding filing a lawsuit to collect subject debts in the event creditor(s) is/are willing to accept a settlement or Client is unable to propose a settlement acceptable to the creditor. After considering these possibilities, client wishes to proceed with representation in accordance with the terms and conditions of this agreement."

3.     It further stated:  
"...Settlements are negotiated as to each creditor. When all funds for a particular creditor are available in the trust account, then that particular creditor shall be paid."

4.     In another portion of the Retainer Agreement, the clients initialed certain statements, confirming their understanding. Among those items were the following:

'I understand that my payments will first apply to the NON-REFUNDABLE 10% retainer fee. After this retainer fee has been paid, a settlement account will be established, and this account is for the exclusive purpose of paying the negotiated settlements and a contingency fee of 15% on the savings.'

'I understand that there must be sufficient funds in my settlement account to cover a settlement of any particular account at the time the settlement is achieved. I understand that the settlement fee for any settlement is due and payable at the time the settlement is completed.'

5. Respondent was admitted to the practice of law in the State of California on November 30, 1976, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

**Case No. 09-O-11082 (Complainant: James Jewell)**

**Facts:**

6. Paragraphs one through five are fully incorporated herein by this reference.

7. On September 15, 2008, James Jewell ("Jewell") retained the Respondent's firm.

8. Prior to retaining the Respondent's firm, Jewell spoke with one of the firm's debt analysts. The analyst induced Jewell to retain Respondent's firm by, in part, making certain predictions and assurances of success that were not warranted and which caused Jewell to disregard the written retainer provisions.

9. Prior to Jewell retaining the Respondent's firm, Respondent did not arrange for him to speak with an attorney

10. Prior to retaining the Respondent's firm, Jewell received no legal advice regarding his specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

**Conclusion of Law:**

11. By failing to adequately supervise his employee debt analyst, by not arranging for Jewell to speak with an attorney prior to retaining the firm, and by failing to provide Jewell with legal advice regarding his specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

**Case No. 07-O-13993 (Complainants: Gene and Jan Murray)**

**Facts:**

12. Paragraphs one through five are fully incorporated herein by this reference.



13. On April 7, 2006, Gene and Jan Murray ("the Murrays") retained the Respondent's firm.

14. Prior to retaining the Respondent's firm, the Murrays spoke with one of the firm's debt analysts. The analyst induced the Murrays to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused the Murrays to disregard the written retainer provisions.

15. Prior to the Murrays retaining the Respondent's firm, Respondent did not arrange for the Murrays to speak with an attorney.

16. Prior to retaining the Respondent's firm, the Murrays received no legal advice regarding their specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

17. Between in or about May 2006 to in or about June 2007, the Murrays regularly requested status reports on their case. Respondent's office received the requests, but failed to adequately provide the Murrays with the requested information.

18. Due to the conduct of respondent's debt analyst, a fee refund was due the Murrays in the amount of \$6,794.83. Respondent made a full refund, but the payment was not prompt.

Conclusions of Law:

19. By failing to adequately supervise his employee debt analyst, by not arranging for the Murrays to speak with an attorney prior to retaining the firm, and by failing to provide the Murrays with legal advice regarding their specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

20. By failing to respond to the Murrays' requests for status reports, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business & Professions Code section 6068(m).

21. By failing to promptly refund the \$6,794.83 advanced fee to the Murrays that had not been earned, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

**Case No. 08-O-14464 (Complainants: Barbara and Lorenzo Hill)**

Facts:

22. Paragraphs one through five are fully incorporated herein by this reference.

23. On February 29, 2008, Barbara and Lorenzo Hill ("the Hills") retained the Respondent's firm.

24. Prior to retaining the Respondent's firm, the Hills spoke with one of the firm's debt analysts. The analyst induced the Hills to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused the Hills to disregard the written retainer provisions.

25. Prior to the Hills retaining the firm, Respondent did not arrange for them to speak with an attorney.

26. Prior to retaining the Respondent's firm, the Hills received no legal advice regarding their specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

27. Due to the conduct of Respondent's debt analyst, a fee refund was due the Hills in the amount of \$1,221.10. Respondent made a full refund, but the payment was not prompt.

Conclusions of Law:

28. By failing to adequately supervise his employee debt analyst, by not arranging for the Hills to speak with an attorney prior to retaining the firm, and by failing to provide the Hills with legal advice regarding their specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

29. By failing to promptly refund the \$1,221.10 advanced fee to the Hills that had not been earned, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

**Case No. 08-O-12644 (Complainants: Gary and Billie Crossno)**

Facts:

30. Paragraphs one through five are fully incorporated herein by this reference.

31. On August 29, 2007, Gary and Billie Crossno ("the Crossnos") retained the Respondent's firm.

32. Prior to retaining the Respondent's firm, the Crossnos spoke with one of the firm's debt analysts. The analyst induced the Crossnos to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused the Crossnos to disregard the written retainer provisions.

33. Prior to the Crossnos retaining the firm, Respondent did not arrange for them to speak with an attorney.

34. Prior to retaining the Respondent's firm, the Crossnos received no legal advice regarding their specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

Conclusion of Law:

35. By failing to adequately supervise his employee debt analyst, by not arranging for the Crossnos to speak with an attorney prior to retaining the firm, and by failing to provide the Crossnos with legal advice regarding their specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

**Case No. 09-O-13013 (Complainants: Daniela and Roger Williams)**

Facts:

36. Paragraphs one through five are fully incorporated herein by this reference.

37. On August 16, 2007, Daniela and Roger Williams ("the Williams") retained the Respondent's firm.

38. Prior to retaining the Respondent's firm, the Williams spoke with one of the firm's debt analysts. The analyst induced the Williams to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused the Williams to disregard the written retainer provisions.

39. Prior to the Williams retaining the firm, Respondent did not arrange for them to speak with an attorney.

40. Prior to retaining the Respondent's firm, the Williams received no legal advice regarding their specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

Conclusion of Law:

41. By failing to adequately supervise his employee debt analyst, by not arranging for the Williams to speak with an attorney prior to retaining the firm, and by failing to provide the Williams with legal advice regarding their specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

**Case No. 09-O-14472 (Complainant: Bruce Larsen)**

**Facts:**

42. Paragraphs one through five are fully incorporated herein by this reference.
43. On April 11, 2008, Bruce Larsen ("Larsen") retained the Respondent's firm.
44. Prior to retaining the Respondent's firm, Larsen spoke with one of the firm's debt analysts. The analyst induced Larsen to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused Larsen to disregard the written retainer provisions.
45. Prior to Larsen retaining the firm, Respondent did not arrange for him to speak with an attorney.
46. Prior to retaining the Respondent's firm, Larsen received no legal advice regarding his specific situation or the potential advantages of filing for bankruptcy versus debt reduction.
47. Due to the conduct of Respondent's debt analyst, a fee refund was due to Larsen in the amount of \$3,856.23. Respondent made a full refund, but the payment was not prompt.

**Conclusions of Law:**

48. By failing to adequately supervise his employee debt analyst, by not arranging for Larsen to speak with an attorney prior to retaining the firm, and by failing to provide him with legal advice regarding his specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A)
49. By failing to promptly refund the \$3,856.23 advanced fee to Larsen that had not been earned, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

**Case No. 09-O-11415 (Complainant: Linda Persinger)**

**Facts:**

50. Paragraphs one through five are fully incorporated herein by this reference.
51. On August 31, 2006, Linda Persinger ("Persinger") retained the Respondent's firm.
52. Prior to retaining the Respondent's firm, Persinger spoke with one of the firm's debt analysts. The analyst induced Persinger to retain the firm by, in part, making certain

predictions and assurances of success that were not warranted and which caused Persinger to disregard the written retainer provisions.

53. Prior to Persinger retaining the firm, Respondent did not arrange for her to speak with an attorney.

54. Prior to retaining the Respondent's firm, Persinger received no legal advice regarding her specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

55. On April 29, 2008, US Bank filed a lawsuit against Persinger in Michigan State Court, entitled Capital Alliance LLC v. Linda D. Persinger.

56. Pursuant to the retainer agreement, the Respondent's firm retained a firm in Michigan to represent Persinger in that lawsuit.

57. While the Michigan firm was representing Persinger, Summary Judgment was awarded against her in August 2008, and based upon that Judgment, US Bank attached Persinger's bank account in February 2009.

58. During the period from June 2008 through August 2008, Persinger made a number of requests to Respondent's firm for information as to the status of the Michigan case, but Respondent's firm failed to obtain that information from the Michigan law firm that was representing Persinger, and, therefore, Respondent's firm also failed to inform Persinger of the status of her Michigan case.

#### Conclusions of Law:

59. By failing to adequately supervise his employee debt analyst, by not arranging for Persinger to speak with an attorney prior to retaining the firm, and by failing to provide her with legal advice regarding her specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

60. By failing to inform Persinger that US Bank had sought and obtained Summary Judgment and that the Judgment could be used by US Bank to attach her assets, Respondent failed to respond promptly to reasonable status inquiries of a client and failed to inform his client of significant developments in a matter in which Respondent had agreed to provide legal services in willful violation of Business & Professions Code section 6068(m).

#### Case No. 10-O-01319 (Complainant: June Tilem)

#### Facts:

61. Paragraphs one through five are fully incorporated herein by this reference.

62. On February 4, 2009, June Tilem ("Tilem") retained the Respondent's firm.

63. Prior to retaining the Respondent's firm, Tilem spoke with one of the firm's debt analysts. The analyst induced her to retain the firm by, in part, making certain predictions and assurances of success that were not warranted and which caused Tilem to disregard the written retainer provisions.

64. Prior to Tilem retaining the firm, Respondent did not arrange for her to speak with an attorney.

65. Prior to retaining the Respondent's firm, Tilem received no legal advice regarding her specific situation or the potential advantages of filing for bankruptcy versus debt reduction.

Conclusion of Law:

66. By failing to adequately supervise his employee debt analyst, by not arranging for Tilem to speak with an attorney prior to retaining the firm, and by failing to provide her with legal advice regarding her specific situation and regarding the potential advantages of filing for bankruptcy as opposed to engaging in debt reduction, respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 10-O-02116 (Complainant: Stacy Sansone)

Facts:

67. Paragraphs one through five are fully incorporated herein by this reference.

68. On July 10, 2009, Stacy Sansone ("Sansone") retained the Respondent's firm to assist her in obtaining a loan modification.

69. Prior to retaining the Respondent's firm, Sansone spoke with one of the firm's loan modification analysts. The analyst induced her to retain the firm by, in part, making certain predictions and assurances of success that were not warranted.

70. Prior to Sansone retaining the firm, Respondent did not arrange for her to speak with an attorney.

71. Prior to retaining the Respondent's firm, Sansone received no legal advice regarding her specific situation.

72. Due to the conduct of Respondent's loan modification analyst, a fee refund was due Sansone in the amount of \$1,995. Respondent made a full refund, but the payment was not prompt.

Conclusions of Law:

73. By failing to adequately supervise his employee loan modification analyst, by not arranging for Sansone to speak with an attorney prior to retaining the firm, and by failing to provide her with legal advice regarding her specific situation, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

74. By failing to promptly refund the \$1,995 advanced fee to Sansone that had not been earned, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

**Case No. 08-O-14348 (SBI: "Kucera Supervision Matter")**

Facts:

75. At all relevant times, Respondent employed attorney Frank Kucera ("Kucera") to handle certain client matters and responsibilities for Respondent's clients. Respondent delegated, among others, the following client litigation matters for which he was employed to Kucera ("Kucera Litigation Clients"):

a. Christine Madden, Wells Fargo Bank v. Christine Madden, Marin County Superior Court Case Number 0551354.

b. Juan Garrido, First Resolution Investment Corporation v. Garrido, Marin County Superior Court Case Number CB053300.

c. Mihran Keeshishian, Unifund CCR Partners v. Keeshishian, Marin County Superior Court CV1060495.

d. Mary Ann Tang-Perlas, Capital One Bank v. Tang-Perlas, Contra Costa County Superior Court Case Number CIV MSL06-04106.

e. Steven G. and Evelyn Angulo, Discover Bank v. Angelo, San Diego Superior Court Case Number IC865717.

76. Kucera appeared as counsel of record for the Kucera Litigation Cases.

77. Between November 2005 and June 2007, Kucera, on numerous occasions, failed to comply with court orders, failed to make court appearances, and he was sanctioned on a number of occasions for matters involving the Kucera Litigation Clients.

78. Among the court-sanctions was the striking of a client's Answer to the plaintiffs Complaint. On a number of occasions, the courts imposed monetary sanctions on Kucera as a result of his failures to comply with court orders and failures to appear. Kucera failed to pay a number of the sanctions.

79. Respondent failed to properly supervise Kucera by failing to inform himself as to the status of the cases in question, by failing to require Kucera or another attorney to file the required documents, make court appearances, and pay the court-ordered sanctions for the Kucera Litigation Clients.

Conclusion of Law:

80. By failing to properly supervise Kucera for matters involving the Kucera Litigation Clients, Respondent repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

**B. FACTS SUPPORTING AGGRAVATION.**

**1. Prior Record of Discipline [Standard 1.2(b)(i)]**

In State Bar Court case number 90-O-16014 et al. (Supreme Court Order Number SO41090, effective October 28, 1994), Respondent was suspended for one year, stayed, and placed on probation for three years resulting from seven client matters for failing to maintain complete records regarding the receipt of client funds, failing to communicate, failing to competently perform and failing to promptly refund unearned fees.

**2. Multiple Acts/Pattern of Misconduct [Standard 1.2(b)(ii)]**

Respondent's misconduct involved ten (10) separate client matters and sixteen (16) counts alleging violations of the Rules of Professional Conduct which constitute multiple acts of misconduct.

**C. FACTS SUPPORTING MITIGATION.**

**1. Candor/Cooperation [Standard 1.2(e)(v)]**

Respondent cooperated in that he has stipulated to facts, conclusions of law and level of discipline.

**D. AUTHORITIES SUPPORTING DISCIPLINE.**

Applicable Standards:

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, the sanction imposed shall be the more or most severe of the different applicable sanctions. Standard 1.6(b) provides that a greater or lesser degree of discipline than the



appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

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

Standard 2.6 provides that culpability of a member of a violation of any of the following provisions of the *Business and Professions Code* 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 set forth in standard 1.3:...(a) Sections 6067 and 6068....

Standard 2.10 provides that the culpability of a member for violation of any provision of the Business and Professions Code or any Rule of Professional Conduct not specified in the Standards shall result in reproof or suspension, according to the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3.

Based on Standard 1.6(a), the most severe sanction for Respondent's misconduct herein is found in Standard 2.6, which provides for suspension or disbarment. However, ten of the sixteen violations stipulated to herein are for failures to perform services in individual matters, which are under the ambit of Standard 2.4(b), which provides for reproof or suspension. Therefore, the application of Standard 2.4(b) is more reasonable.

Moreover, the mitigating circumstances discussed above do not justify a deviation from the Standards or a discipline less than suspension. Therefore, parties acknowledge that Respondent's misconduct herein, and the aggravating circumstances surrounding that misconduct warrant actual suspension for a period of nine (9) months.

#### **E. PENDING PROCEEDINGS.**

The disclosure date referred to on page two, paragraph A. (7) was September 15, 2011.

#### **F. COSTS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of September 15, 2011, the estimated prosecution costs in this matter are approximately \$14,201.47. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

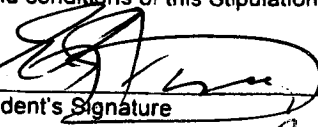

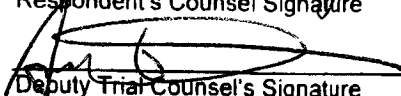
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In the Matter of:  
EMILIO N. FRANCISCO

Case number(s):  
07-O-13993; 08-O-12644; 08-O-14348;  
08-O-14464; 09-O-11082; 09-O-11415;  
09-O-13013; 09-O-14472; 10-O-01319;  
10-O-02116

### 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 Facts, Conclusions of Law, and Disposition.

<u>9-16-2011</u>		Emilio N. Francisco
Date	Respondent's Signature	Print Name
<u>9/20/11</u>		Arthur L. Margolis
Date	Respondent's Counsel Signature	Print Name
<u>9/21/11</u>		Ashod Mooradian
Date	Deputy Trial Counsel's Signature	Print Name

In the Matter of: EMILIO N. FRANCISCO	Case Number(s): 07-O-13993; 08-O-12644; 08-O-14348; 08-O-14464; 09-O-11082; 09-O-11415; 09-O-13013; 09-O-14472; 10-O-01319; 10-O-02116
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### ACTUAL SUSPENSION 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 2 of the stipulation, in paragraph A(8), the stipulated membership years "2012 and 2013" are CHANGED to "2013 and 2014" so that the affected sentence now reads: "Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013 and 2014."

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 5.58(E) & (F), 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

9/29/11

Judge of the State Bar Court



**DONALD F. MILES**

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 September 29, 2011, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:


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

**ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

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

**ASHOD MOORADIAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 29, 2011.

  
\_\_\_\_\_  
Tammy Cleaver  
Case Administrator  
State Bar Court