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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p>Cindy McCaughey Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 213/765-1491</p> <p>Bar # 222126</p>	<p>Case Number(s):</p> <p>08-O-10494 09-O-10377 09-O-14722 09-O-17591 09-O-17592 09-O-17593 09-O-17594 10-O-03285</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</p> <p style="text-align: center;">MAR 18 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>James L. Kellner 350 Crenshaw Blvd. Suite A207-A Torrance, CA 90503 310/618-6895</p> <p>Bar # 50875</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Manuel Ortega</p> <p>Bar # 79519</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 May 11, 1978.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 pages, not including the order.



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- (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: (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 92-O-14924 [93-O-12947; 93-O-17421]
  - (b)  Date prior discipline effective April 1, 1995
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 4-100(A), 4-100(B)(4) and former rules 8-101(A) and 8-101(B)(4). Business and Professions Code section 6106.
  - (d)  Degree of prior discipline Actual suspension (60 days)
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case # of prior case: 95-PM-17575.

Date of prior discipline effective: February 7, 1997.

Rules of Professional Conduct / State Bar Act violations: Business and Professions Code section 6068(k)

Degree of prior discipline: Stayed suspension (30 days)

- (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.

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- (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.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. Upon learning of the complaints filed in at least two cases, Respondent promptly to steps to rectify the misconduct including financial reparations.
- (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.

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- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of five (5) 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 five (5) 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 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:

**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:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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:** \_\_\_\_\_

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In the Matter of: Manuel Ortega	Case Number(s): 08-O-10494; 09-O-10377; 09-O-14722 09-O-17591; 09-O-17592; 09-O-17593 09-O-17594; 10-O-03285
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## Financial Conditions

### a. Restitution

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

Payee	Principal Amount	Interest Accrues From
Argelia Hernandez	\$500.00	October 9, 2007
Douglas Brown	\$450.00	April 22, 2008
Margarito Morales	\$10,170.00	April 23, 2001
Otilio Lopez	\$6,100.00	April 23, 2001
Jose Mendez	\$17,450.00	January 13, 2002
Luis Barcena	\$6,570.00	April 23, 2001
Jose Ochoa	\$1,000.00	April 1, 2000

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

### b. Installment Restitution Payments

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

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

- 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.

### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:

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- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";



- b. Respondent has kept and maintained the following:
  - i. A written ledger for each client on whose behalf funds are held that sets forth:
    - 1. the name of such client;
    - 2. the date, amount and source of all funds received on behalf of such client;
    - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
    - 4. the current balance for such client.
  - ii. a written journal for each client trust fund account that sets forth:
    - 1. the name of such account;
    - 2. the date, amount and client affected by each debit and credit; and,
    - 3. the current balance in such account.
  - iii. all bank statements and cancelled checks for each client trust account; and,
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
  - i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
- 2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
- 3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

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

**ATTACHMENT TO**

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

IN THE MATTER OF: Manuel Ortega

CASE NUMBER(S): 08-O-10494 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. 08-O-104-94 (State Bar Investigation)

FACTS:

1. During the period from September 2007 to March 2008, Respondent maintained a trust account at Bank of the West, account no. XXX-XX2744<sup>1</sup> ("Respondent's CTA").
2. During the period from September 2007 to March 2008, Respondent deposited and maintained personal funds, including earned fees, in Respondent's CTA and used the funds to pay personal expenses.

CONCLUSIONS OF LAW:

3. By paying personal expenses using personal funds deposited and maintained in Respondent's CTA, Respondent commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of Rules of Professional Conduct, rule 4-100(A).

Case No. 09-O-10377 (Complainant: Argelia Hernandez)

FACTS:

4. On October 9, 2007, Argelia Hernandez ("Hernandez") visited Respondent's law office in Anaheim and met with John Castro ("Castro").
5. Castro, who is not an attorney, managed Respondent's Anaheim law office.
6. When Castro met with Hernandez, Castro introduced himself to Hernandez as an attorney and agreed to provide legal services to Hernandez to assist her in filing an I-485 petition for adjustment of status to permanent resident.

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<sup>1</sup> The complete account number has been omitted due to privacy concerns.

7. At Castro's instruction, Hernandez paid \$500 by check to Castro for fees for legal services. Castro gave Hernandez a receipt for the \$500 payment bearing the name of Respondent's law practice. Hernandez also gave Castro documents she had regarding a prior immigration petition.

#### CONCLUSIONS OF LAW:

8. By employing Castro in his law office and allowing Castro to hold himself out to Hernandez as an attorney, Respondent aided a person or entity in the unauthorized practice of law, in willful violation of Rules of Professional Conduct, rule 1-300(A).

#### Case No. 09-O-14722 (Complainant: Douglas Brown)

#### FACTS:

9. On April 22, 2008, Douglas Brown ("Brown") visited Respondent's office in Anaheim and met with Respondent's employee, John Castro ("Castro"), to discuss employing Respondent to represent Oscar Garcia ("Garcia") in a criminal proceeding. At that time, Brown signed a fee agreement to pay Respondent \$10,000 as a fee, and Brown paid Respondent \$3,000 towards the fee.

10. In June 2008, Castro informed Brown that Respondent had declined to take the case and that his fees would be refunded. Thereafter, Respondent did not promptly refund any of the fees to Brown or Garcia until Brown sought recourse in a Small Claims Court action in November 2009.

11. In June 2009, Castro paid Brown \$1,000 by money order as a partial refund of fees.

12. In or about November 2009, Castro paid Brown \$1,550 by money order plus \$100 for his court costs.

13. At no time did Respondent provide Brown or Garcia with an accounting for any fees Respondent claimed to have earned.

#### CONCLUSIONS OF LAW:

14. By not refunding promptly the unearned fees to Brown or Garcia, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

15. By retaining \$450 of the fees paid by Brown without providing any accounting to Brown for how the fees were earned, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 09-O-17591 (Complainant: Margarito Morales) [unfiled matter]

FACTS:

16. On April 23, 2001, Margarito Lagunas Morales ("Morales") visited Respondent's law office in Corona, California, seeking legal services in an immigration matter. Morales met with Efrain Ortega ("Efrain") who identified himself as Respondent's Legal Administrator. At that time, Morales signed a fee agreement to employ the firm of "Ortega & Associates" to represent him in applying for alien labor certification for a fee of \$3,800.

17. The fee agreement was signed by Respondent and by Efrain who was identified as an Immigration Consultant and Legal Assistant. Thereafter, Morales paid the \$3,800 fee to Efrain in monthly payments and received receipts from Efrain bearing the name of "Ortega & Associates."

18. On March 8, 2007, Morales paid an additional \$1,850 for the required work at Efrain's request. Efrain gave Morales a receipt for that amount bearing the name of "Ortega & Associates."

19. On June 1, 2007, Morales paid another \$700 to Efrain in advanced fees for legal services and received a receipt bearing the name of "Ortega & Associates."

20. On July 27, 2007, Morales paid an additional \$3,620 in advanced fees to Efrain for a petition for an immigrant alien worker and received a receipt bearing the name of "Ortega & Associates."

21. On September 21, 2007, Morales paid \$300 to Efrain in advanced fees for legal services and received a receipt bearing the name of "Ortega & Associates."

22. On April 4, 2008, Morales paid \$200 in advanced fees for legal services to Efrain at Respondent's Corona Law Office. Thereafter, Efrain vacated Respondent's Corona law office.

23. Neither Respondent nor Efrain completed the legal services for Morales to file an immigrant petition for an alien worker.

CONCLUSIONS OF LAW:

24. By accepting fees from Morales for legal services in an immigration matter and not completing services, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 09-O-17592 (Complainant: Otilio Lopez) [unfiled matter]

FACTS:

25. On April 23, 2001, Otilio Lopez ("Lopez") visited Respondent's law office in Corona, California, seeking legal services in an immigration matter. Lopez met with Efrain Ortega ("Efrain") who identified himself as Respondent's Legal Administrator. At that time, Lopez signed a fee agreement to employ the firm of "Ortega & Associates" to represent him in applying for alien labor certification for a fee of \$4,600.

26. The fee agreement was signed by Respondent and by Efrain who was identified as an Immigration Consultant and Legal Assistant. Thereafter, Lopez paid the \$4,600 fee to Efrain in monthly payments and received receipts from Efrain bearing the name of "Ortega & Associates."

27. On June 24, 2006, Lopez paid an additional \$1,500 to Efrain in advanced fees for legal services and received a receipt bearing the name of "Ortega & Associates."

28. Neither Respondent nor Efrain completed the legal services for Lopez to file an immigrant petition for an alien worker.

#### CONCLUSIONS OF LAW:

29. By taking fees from Lopez for legal services in an immigration matter and not completing services, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

#### Case No. 09-O-17593 (Complainant: Jose Mendez) [unfiled matter]

#### FACTS:

30. On January 13, 2002 Jose Mendez ("Mendez") visited Respondent's law office in Corona, California, seeking legal services in an immigration matter.

31. Mendez met with Efrain Ortega ("Efrain") who identified himself as Respondent's Legal Administrator. At that time, Mendez employed the firm of "Ortega & Associates" to represent him in applying for an adjustment in his immigration status, as well as, and adjustment for his wife and his two daughters.

32. During the period of January 13, 2002 until March 7, 2007, Mendez paid a total of \$17,450 in advance fees to Efrain either in monthly payments or large lump sums, and received receipts from Efrain bearing the name of "Ortega & Associates."

33. Respondent completed some legal work for Mendez including filing an Application for Alien Employment Certification on March 29, 2002 and an I-140 Petition for Alien Worker on January 23, 2008.

34. In March 2009, Mendez met with Respondent to discuss the status of his matters. After this meeting, Mendez requested the return of his file and a refund of any unearned fees.

35. Thereafter, Respondent did not provide Mendez with an accounting of any unearned fees.

#### CONCLUSIONS OF LAW:

36. By retaining \$17,450 of the fees paid by Brown without providing any accounting to Brown for how the fees were earned, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

Case No. 09-O-17594 (Complainant: Luis Barcena)[unfiled matter]

FACTS:

37. On April 23, 2001, Luis E. Barcena ("Barcena") visited Respondent's law office in Corona, California, seeking legal services in an immigration matter. He met with Efrain Ortega ("Efrain") who identified himself as Respondent's Legal Administrator. At that time, Barcena signed a fee agreement to employ the firm of "Ortega & Associates" to represent him in applying for alien labor certification for a fee of \$3,600. Although Barcena did not meet Respondent, the fee agreement was signed by Respondent and by Efrain who was identified as an Immigration Consultant and Legal Assistant. Thereafter, Barcena paid the \$4,600 fee to Efrain in monthly payments and received receipts from Efrain bearing the name of "Ortega & Associates."

38. On March 7, 2007, Barcena paid \$1,850 to Efrain in advanced fees for legal services and received a receipt bearing the name of "Ortega & Associates."

39. On July 27, 2007, Barcena paid \$4,120 to Efrain in advanced fees for legal services and received a receipt bearing the name of "Ortega & Associates."

40. On July 31, 2007, Efrain or Respondent submitted an immigrant petition for alien worker on behalf of Barcenas to the U.S. Citizenship and Immigration Services ("USCIS"). Thereafter, neither Efrain nor Respondent provided the necessary documents to complete the petition on behalf of Barcenas, and on about February 12, 2009, the USCIS denied the petition.

CONCLUSIONS OF LAW:

41. By taking fees from Barcenas for legal services in an immigration matter and not completing services, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 10-O-03285 (Complainant: Jose Ochoa ) [unfiled matter]

FACTS:

42. In April 2000, Jose Ochoa ("Ochoa") hired the Law Offices of Manuel Ortega to represent him in an automobile accident which occurred in Mexico on December 4, 1999. Ochoa paid Respondent \$1,000 in advance fees for legal services.

43. Thereafter, Respondent took no action to provide legal services on behalf of Ochoa or to advise Ochoa of his legal options.

44. On May 29, 2009, Ochoa met with Respondent to discuss the status of his case and demand the matter be brought to resolution.

45. On August 18, 2009, Ochoa consulted with another attorney who informed him that the Statue of Limitations had long since expired.

## CONCLUSIONS OF LAW:

46. By failing to take any action on Ochoa's case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

## PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 7, 2011.

## AUTHORITIES SUPPORTING DISCIPLINE.

Pursuant to Standard 1.3:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Under Standard 1.6 (a), when "two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 1.7 (b) provides that when a member has two prior impositions of discipline, disbarment is appropriate unless the most compelling mitigating circumstances clearly predominate.

Pursuant to Standard 2.2 (b) when a member is culpable of "commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct" with no willful misappropriation, actual suspension of at least three months, irrespective of mitigating circumstances, is appropriate.

The Supreme Court has recognized that the Standards provide a guideline and do not mandate the recommended discipline to be imposed. (*Boehme v. State Bar* (1988) 47 Cal.3d 448, 454; *Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 550.) The Court has also held that each case must be resolved on its own particular facts and not by application of rigid standards.

In this case, the parties submit a deviation from Standard 1.7(b) is appropriate based upon the age and nature of Respondent's second prior discipline in case number 95-PM-17575. Respondent was disciplined for failing to file CPA certificates with his quarterly reports, however in the resolution of that

matter, the parties stipulated that Respondent did not practice law for at least one year from the time his original discipline had been imposed. Moreover, the parties stipulated he had no active accounts or clients. The conditions of his probation required only that he file CPA Certificates if he was in possession of clients' funds.

Thus, the second prior discipline should be given little weight in aggravation and the parties submit that the purposes set forth in Standard 1.3 are met by imposing a 5 years' stayed suspension, 5 years' probation, 2 years' actual suspension, compliance with Rule 9.20, satisfaction of Standard 1.4(c)(ii) and the other conditions as set forth herein.

**DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
09-O-10377	Three	Rules of Professional Conduct, rule 3-110(A)
09-O-10377	Four	Rules of Professional Conduct, rule 3-700(D)(1)
09-O-10377	Five	Rules of Professional Conduct, rule 3-700(D)(2)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 8, 2011, the prosecution costs in this matter are estimated to be \$ 9,333.00 Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

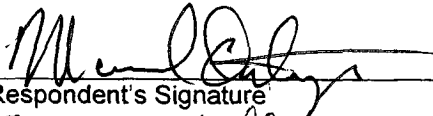
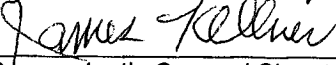
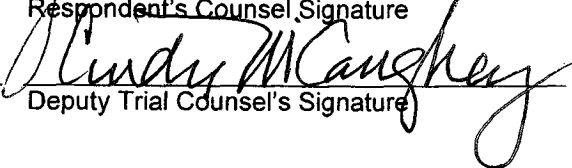


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In the Matter of: Manuel Ortega	Case number(s): 08-O-10494 09-O-10377 09-O-14722 09-O-17591 09-O-17592 09-O-17593 09-O-17594 10-O-03285
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### SIGNATURE OF THE PARTIES

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 Facts, Conclusions of Law, and Disposition.

<u>5/10/11</u> Date	 Respondent's Signature	<u>Manuel Ortega</u> Print Name
<u>3/10/11</u> Date	 Respondent's Counsel Signature	<u>James Kellner</u> Print Name
<u>3/11/11</u> Date	 Deputy Trial Counsel's Signature	<u>Cindy McCaughey</u> Print Name

(Do not write above this line.)

In the Matter of: Manuel Ortega	Case Number(s): 08-O-10494 09-O-10377 09-O-14722 09-O-17591 09-O-17592 09-O-17593 09-O-17594 10-O-03285
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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 5 of the stipulation, the "X" in box E(1) is DELETED to remove the conditional standard 1.4(c)(ii) requirement. (The conditional standard 1.4(c)(ii) requirement is inappropriate because it is inconsistent with the mandatory standard 1.4(c)(ii) requirement in paragraph D(3)(a)(i) on page 4 of the stipulation.)

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.)**

3/18/11  
Date

  
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 March 18, 2011, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

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

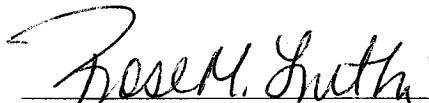
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES LAWRENCE KELLNER, ESQ.  
350 CRENSHAW BLVD #A207/A  
TORRANCE, CA 90503 - 1726

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

CYNTHIA MCCAUGHEY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 18, 2011.



Rose Luthi  
Case Administrator  
State Bar Court