

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

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<p>Counsel For The State Bar</p> <p>Tammy M. Albertsen-Murray 180 Howard Street San Francisco, CA 94105 (415) 538-2527</p> <p>Bar # 154248</p>	<p>Case Number (s)</p> <p>08-O-11604; 08-O-14362; 09-O-10534; 09-O-10954; 09-O-11002; 09-O-1140; 09-O-10021; 09-O-11943; 09-O-12467; 09-O-15881; 09-O-17483; 09-O-18038-LMA and UNFILED case numbers 10-O-02760; 10-O-05972</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>R</i></p> <p>AUG 10 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Henry Dorame Nunez 4478 W Spatz Avenue Fresno, CA 93722 (559) 437-9200</p> <p>Bar # 63412</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: RICHARD A. LIMA</p> <p>Bar # 184783</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 41 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."

(Do not write above this line.)

- (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 attachment.
- (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. See attachment.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment.
- (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 attachment.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

See attachment, page 37.

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

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

See Attachment, page 38.

**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: and until Respondent pays restitution as set forth in the Stipulation attachment at pages 39-40.
- (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 three (3) 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: and until Respondent pays restitution as set forth in the Stipulation attachment at pages 39-40.

**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.

(Do not write above this line.)

- (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 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:

(Do not write above this line.)

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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 attachment, page 39.

**ATTACHMENT TO**

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

IN THE MATTER OF:            RICHARD A. LIMA

CASE NUMBERS:            08-O-11604; 08-O-14362; 09-O-10534; 09-O-10954; 09-O-11002;  
   09-O-1140; 09-O-10021; 09-O-11943; 09-O-12467; 09-O-15881;  
   09-O-17483; 09-O-18038-LMA and UNFILED case numbers 10-  
   O-02760; 10-O-05972

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.

**FACTS AND CONCLUSIONS OF LAW.**

**THE SINGLETON MATTER - Case number 09-O-11002 (contained in the Notice of Disciplinary Charges filed July 16, 2009, hereinafter "NDC 1").**

Count One(A) - Rules of Professional Conduct, rule 4-100(A) [Failure to Deposit/Maintain Client Funds in Trust Account]

1.        At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").<sup>1</sup>
2.        On September 25, 2008, the balance in respondent's trust account was \$480.35.
3.        On September 26, 2008, Howard Singleton employed respondent to file a Chapter 7 bankruptcy. At the time that Singleton employed respondent, he paid respondent an advanced fee of \$1,000 and an advanced cost of \$299 for the bankruptcy petition filing fee.
4.        Respondent was obligated to deposit the \$299 in his trust account since it was an advanced fee. Respondent failed to deposit the \$299 into his trust account or into any other account.
5.        On December 31, 2008, WestAmerica closed respondent's trust account.
6.        Respondent never filed a Chapter 7 bankruptcy petition for Singleton.
7.        By failing to deposit or maintain Singleton's advanced costs in a trust account, respondent failed to deposit and to maintain funds received for the benefit of a client 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).

Count One(B) - Business and Professions Code, section 6106 [Moral Turpitude-Misappropriation]

8.        Count One(A) is incorporated by reference as if fully set forth herein.
9.        Respondent failed to maintain Singleton's advanced costs in a trust account.
10.      Respondent failed to use the advanced costs to pay Singleton's bankruptcy petition filing fee.

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<sup>1</sup> The bank account number is identified by the last four digits to protect the account's privacy.

11. Respondent used Singleton's advanced costs of \$299 for his own personal use and benefit and not for the use and benefit of Singleton.
12. To date, respondent has failed and refused to refund the \$299 filing fee to Singleton.
13. By using Singleton's advanced costs for his own use and benefit, and not for the use and benefit of Singleton, respondent misappropriated \$299 from Singleton.
14. By failing to deposit and maintain Singleton's advanced costs in his trust account, respondent misappropriated \$299 from Singleton.
15. By misappropriating \$299 from Singleton, respondent committed acts of moral turpitude, dishonesty and corruption, in violation of Business and Professions Code, section 6106.

Count One(C) - Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries]

16. At the time that Singleton employed respondent, respondent informed Singleton that he did not qualify for bankruptcy because Singleton's wife was collecting unemployment. Respondent instructed Singleton to contact him when his wife ceased receiving unemployment checks.
17. In October 2008, Singleton's wife ceased receiving unemployment checks.
18. Between October 31, 2008 and November 7, 2008, Singleton telephoned respondent at least eight times to inform respondent that his wife ceased receiving unemployment checks and to obtain a status update on his matter.
19. Each time Singleton telephoned respondent, he left a message requesting that respondent return his telephone call and provide him with a status update. Respondent received Singleton's telephone messages requesting a status update on his matter, but respondent failed to respond to the telephone calls and failed to provide Singleton with a status update on his matter.
20. By failing to respond to Singleton's status update requests between October 31, 2008 and November 7, 2008, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

Count One(D) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

21. Count One(C) is incorporated by reference as if fully set forth herein.
22. Between September 26, 2008 and January 16, 2009, respondent performed no services of value for Singleton. Respondent failed to prepare or file any documentation regarding Singleton's bankruptcy petition.
23. By failing to perform any services for Singleton, respondent recklessly, intentionally and repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Count One(E) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

24. Counts One(C) and One(D) are incorporated by reference as if fully set forth herein.



25. Respondent performed no services of value for Singleton and failed to file a bankruptcy petition on behalf of Singleton. Respondent owed Singleton a refund of \$1,300 since respondent performed no services of value for Singleton.

26. On January 16, 2009, Singleton sent respondent an email requesting that respondent return the \$1,300 that Singleton paid respondent in advanced fees and costs. Respondent received Singleton's email requesting that respondent return Singleton's advanced fees and costs.

27. On January 16, 2009, respondent telephoned Singleton. During that discussion, Singleton informed respondent that he was terminating respondent's services. Singleton also again requested that respondent refund the \$1,300 that he provided respondent in advanced fees and costs. During the conversation, respondent stated that he would telephone Singleton on January 19, 2009 to arrange for Singleton to pick up his documents and his refund of \$1,300.

28. On January 20, 2009, respondent arranged for Singleton to pick up his documentation, but respondent failed to provide Singleton with a refund of his funds.

29. On January 26, 2009, Singleton sent respondent a letter again requesting that respondent refund the \$1,300 that he paid respondent. Respondent received Singleton's January 26 letter, but failed to respond to it and failed to refund any funds to Singleton.

30. By failing to refund any funds to Singleton, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in violation of Rules of Professional Conduct, rule 3-700(D)(2).

**THE CHEATHAM MATTER - Case number 09-O-11402 (NDC 1).**

Count Two(A) - Rules of Professional Conduct, rule 4-100(A) [Failure to Deposit/Maintain Client Funds in Trust Account]

31. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").

32. On December 10, 2008, the balance in respondent's trust account was --\$26.82.

33. On December 18, 2008, James and Cheryl Cheatham employed respondent to file and complete a Chapter 13 bankruptcy petition. At the time that the Cheathams employed respondent, they explained to respondent that they were employing him to file a Chapter 13 bankruptcy petition and not a Chapter 7 bankruptcy petition.

34. On December 18, 2008, the Cheathams paid respondent \$1,500, which included attorney fees of \$1,201 and a bankruptcy petition filing fee of \$299.

35. Respondent was obligated to deposit the \$299 filing fee into his trust account since it was an advanced cost. Respondent failed to deposit the \$299 filing fee into his trust account.

36. On December 18, 2008, respondent used the \$299 that he received from the Cheathams for his own personal use and benefit and not for the use and benefit of the Cheathams.

37. On December 22, 2008, respondent filed a Chapter 7 bankruptcy petition in the Eastern District of California Bankruptcy Court, case number 08-18441. At the time that respondent filed the Chapter 7 petition, respondent knew that the Cheathams had employed him to file a Chapter 13 petition.

38. At the time that respondent filed the bankruptcy petition, he filed a motion requesting that the filing fees be paid in installment payments. Respondent filed the request to make installment payments without the Cheathams' knowledge or permission.

39. Respondent filed the installment payment request for his benefit, and not for the benefit of the Cheathams.

40. On December 23, 2008, the court granted respondent's request and set a filing fee schedule that required a payment of \$100 before December 31, 2008, \$100 before January 7, 2009 and \$99 before January 16, 2009.

41. On December 29, 2008, the balance in respondent's trust account was --\$59.82. On December 31, 2008, WestAmerica closed respondent's trust account.

42. Respondent never deposited the Cheathams' advanced costs of \$299 into his trust account or any other trust account.

43. By failing to deposit or maintain the Cheathams' advanced costs in a trust account, respondent failed to deposit and to maintain funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import.

Count Two(B) - Business and Professions Code, section 6106 [Moral Turpitude-Misappropriation]

44. Count Two(A) is incorporated by reference as if fully set forth herein.

45. Respondent failed to maintain the Cheathams' advanced costs in a trust account.

46. Respondent failed to use the advanced costs to pay the Cheathams' bankruptcy petition filing fee.

47. Respondent used the Cheathams' advanced costs of \$299 for his own personal use and benefit and not for the use and benefit of the Cheathams. By using the Cheathams' advanced costs for his own use and benefit, and not for the use and benefit of the Cheathams, respondent misappropriated \$299 from the Cheathams.

48. By failing to deposit and maintain the Cheathams' advanced costs in his trust account, respondent misappropriated \$299 from the Cheathams.

49. By misappropriating \$299 from the Cheathams, respondent committed acts of moral turpitude, dishonesty and corruption, in violation of violated Business and Professions Code, section 6106.

Count Two(C) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

50. Count Two(A) is incorporated by reference as if fully set forth herein.

51. Prior to December 31, 2008, respondent failed to pay the first installment payment of \$100.

52. On January 7, 2009, the court issued an order to show cause regarding respondent's failure to pay the first installment payment, ordering respondent to appear on January 28, 2009. On January 8, 2009, the court issued an order to show cause because respondent failed to file the necessary documentation when he filed the Chapter 7 bankruptcy petition, ordering respondent to appear on February 4, 2009.

53. On January 8, 2009, the Cheathams learned that respondent filed a Chapter 7 bankruptcy petition, rather than a Chapter 13 bankruptcy petition.

54. Between January 7, 2009 and January 23, 2009, Mr. Cheatham telephoned respondent's office approximately 14 times to obtain a status update on his matter.

55. Between January 7, 2009 and January 23, 2009, respondent received Mr. Cheatham's messages requesting a status update, but respondent failed to respond to the messages and failed to provide Mr. Cheatham with a status update on his matter.

56. Respondent failed to pay the second installment payment of \$100, on January 7, 2009 or at any other time.

57. Respondent failed to pay the third installment payment of \$99 on January 16, 2009 or at any other time.

58. On January 22, 2009, Mr. Cheatham went to respondent's office in an effort to determine the status of his bankruptcy matter. Mr. Cheatham informed respondent that he filed a Chapter 7 bankruptcy petition rather than a Chapter 13 bankruptcy petition. Respondent stated that he would immediately correct the problem.

59. On January 23, 2009, the court issued an Order to Show Cause due to respondent's failure to pay the second and third installment payments that required respondent to appear on February 11, 2009.

60. On January 26, 2009, the respondent filed an application to convert the Cheathams' matter to a Chapter 13 because the Chapter 7 was filed in error. On January 27, 2009, the court granted the application and converted the Cheathams' matter to a Chapter 13 bankruptcy.

61. On January 28, 2009, respondent appeared at the OSC hearing regarding his failure to pay the first installment payment. At the hearing, the Court ordered respondent to pay the filing fees by February 2, 2009.

62. On January 28, 2009, the court sent respondent a notice of incomplete filing because respondent failed to file 16 documents necessary for a Chapter 13 bankruptcy petition and ordered him to file the documents by February 11, 2009, or the case would be dismissed.

63. On February 2, 2009, respondent paid the \$299 filing fees.

64. On February 4, 2009, the court issued a minute order requiring respondent to file the missing Chapter 13 documentation by February 13, 2009, or the case would be dismissed without further notice. On February 9, 2009, the court properly served respondent with a copy of the February 4, 2009 minute order.

65. On February 9, 2009, the Cheathams learned that respondent had failed to file the necessary documentation and their case would be dismissed if respondent failed to file the documentation by February 13, 2009.

66. On February 18, 2009, the court dismissed the Cheathams' petition because respondent failed to file the necessary documentation by February 13, 2009, or at all.

67. On February 19, 2009, the court properly served respondent with a copy of the notice of the order dismissing the Cheathams' case.

68. On February 25, 2009, Mr. Cheatham spoke with respondent's paralegal, Lupe Garcia, and indicated that he was terminating respondent's services and wanted a refund of the \$1,500 that the Cheathams had paid respondent in advanced fees and costs.

69. On February 26 and February 27, 2009, Mr. Cheatham telephoned respondent and left him telephone messages requesting that respondent provide him with a refund of the \$1,500 that he paid respondent. Respondent received the telephone messages, but failed to respond to them and failed to refund any money to the Cheathams.

70. On May 25, 2009, Mr. Cheatham sent respondent a letter requesting that respondent return the \$1,500 that the Cheathams paid in advanced fees and costs. Respondent received the letter, but failed to respond to it and failed to refund any funds to the Cheathams.

71. Respondent improperly filed a Chapter 7 bankruptcy petition when he knew that the Cheathams employed him to file a Chapter 13 bankruptcy. Respondent failed to timely file the documentation required for a Chapter 13 bankruptcy petition.

72. Respondent's failure to file the necessary documentation resulted in the court's dismissal of the Cheathams' bankruptcy petition.

73. The services that respondent did provide resulted in no benefit to the Cheathams since the court dismissed their bankruptcy petition.

74. By filing a Chapter 7 rather than a Chapter 13 bankruptcy petition and by failing to file the necessary Chapter 13 documentation, which resulted in the dismissal of the Cheathams' bankruptcy petition, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Count Two(D) - Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries]

75. Count Two(C) is incorporated by reference as if fully set forth herein.

76. Between January 7, 2009 and January 23, 2009, Mr. Cheatham telephoned respondent's office approximately 14 times to obtain a status update on his matter. Respondent received Mr. Cheatham's messages requesting a status update, but respondent failed to respond to the messages and failed to provide Mr. Cheatham with a status update on his matter.

77. By failing to respond to the Cheathams' status update requests between on January 7, 2009 and January 23, 2009, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m),

Count Two(E) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

78. Count Two(C) is incorporated by reference as if fully set forth herein.

79. Respondent performed no services of value for the Cheathams since respondent's failure to file the necessary documentation resulted in the dismissal of the Cheathams' bankruptcy petition.

80. At the time that the Cheathams terminated respondent, he owed them a refund of \$1,201 in attorney fees.

81. On February 26, 2009 and February 27, 2009, Mr. Cheatham left respondent a message requesting that respondent refund all of their attorney fees. Although respondent received the messages, respondent failed to respond to them and failed to refund any funds to the Cheathams.

82. On May 25, 2009, Mr. Cheatham sent respondent a letter requesting that respondent return the \$1,500 that the Cheathams paid in advanced fees and costs. On June 3, 2009, respondent received the letter, but failed to respond to it and failed to refund any funds to the Cheathams. To date, respondent has failed and refused to refund any funds to the Cheathams.

83. By failing to refund any funds to the Cheathams, 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).

**THE LOSURDO MATTER – Case No. 09-O-10954 (NDC 1)**

**Count Three(A) - Rules of Professional Conduct, rule 4-100(A) [Failure to Deposit/Maintain Client Funds in Trust Account]**

84. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").

85. In June 2008, Donna Losurdo employed respondent to file a bankruptcy petition on her behalf and agreed to pay respondent \$500 in attorney fees.

86. On July 9, 2008, respondent filed a Chapter 7 bankruptcy petition in the Eastern District of California, case number 08-14001.

87. At the time that respondent filed the petition, he sought and received permission to pay the filing fee in installments of \$100 due on August 8, 2008, \$100 due on October 7, 2008 and \$99 due on November 6, 2008.

88. On July 3, 2008 and July 8, 2008, Losurdo paid respondent a total of \$500 in attorney fees.

89. On July 8, 2008, Losurdo provided respondent's office assistant with \$100 in cash for payment of the first installment payment due August 8, 2008. Thereafter, respondent received the money from his assistant.

90. Respondent was obligated to deposit the \$100 filing fee into his trust account since it was an advanced cost. Respondent failed to deposit the \$100 filing fee into his trust account.

91. On July 8, 2008, respondent used the \$100 that he received from Losurdo for his own personal use and benefit and not for the use and benefit of Losurdo.

92. On December 31, 2008, WestAmerica closed respondent's trust account.

93. Respondent never deposited Losurdo's advanced costs of \$100 into his trust account or any other trust account.

94. By failing to deposit or maintain Losurdo's advanced cost of \$100 in a trust account, respondent failed to deposit and to maintain funds received for the benefit of a client 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).

**Count Three(C) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]**

95. Count Three(A) is incorporated by reference as if fully set forth herein.

96. On August 5, 2008, Losurdo provided respondent with a \$100 cashier's check made payable to the bankruptcy court clerk for purpose of making the second installment payment due October 7, 2008. On August 7, 2008, respondent provided the court with the \$100 cashier's check and the court applied that check to the first installment payment.

97. On September 4, 2008, Losurdo provided respondent with a \$99 cashier's check made payable to the bankruptcy court clerk for the purpose of making the third installment payment due November 6, 2008. On September 8, 2008, respondent provided the court with the \$99 cashier's check and the court applied it to the installment payment due November 6, 2008.

98. On October 10, 2008, the court issued an Order to Show Cause re Dismissal of Case or Imposition of Sanctions ("OSC") for failure to pay the installment payment due October 7, 2008 and set a hearing on the matter for October 29, 2008. The Court served respondent and Losurdo with the OSC.

99. Soon after October 10, 2008, Losurdo received the OSC and telephoned respondent to determine why respondent had failed to pay the filing fee. During the discussion, respondent stated that he would attend the October 29, 2008 hearing and pay the filing fee since Losurdo had provided respondent with the filing fee on July 8, 2008. Thereafter, respondent failed to appear at the October 29, 2008 hearing and failed to pay the \$100 filing fee.

100. On October 29, 2008, the court continued the OSC to November 12, 2008 and ordered that the fee be paid by November 6, 2008. The Court served respondent and Losurdo with the order.

101. On November 2, 2008, Losurdo telephoned respondent to determine if respondent had paid the filing fee and was informed by respondent's staff that respondent had not appeared in court or paid the filing fee.

102. On November 5, 2008, Losurdo provided the Court with a letter informing the court that she had provided respondent with the entire filing fee amount.

103. On November 5, 2008, Losurdo paid the \$100 filing fee to avoid the dismissal of her bankruptcy petition.

104. Respondent failed to pay the filing fee and failed to appear at the OSC.

105. By failing to pay the filing fee and failing to appear at the OSC, respondent intentionally, recklessly and repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

#### **THE ROMO MATTER – Case number 09-O-14362 (NDC 1)**

#### **Count Four(A) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]**

106. Prior to March 8, 2007, a deliveryman fell through a sheet of plywood when he was delivering medical equipment to Helen and Juan Romo.

107. On March 8, 2007, the deliveryman filed a personal injury lawsuit against the Romos in the matter *Casillas v. Canale et al*, Madera County Superior Court, Case number MCV 036004 ("personal injury matter.")

108. On May 11, 2007, the Romos filed a response to the complaint, appearing in pro per.

109. On September 19, 2007, respondent offered to represent the Romos for a fee of \$5,000. At the time respondent agreed to represent the Romos, respondent was aware that the Romos were required to respond to outstanding discovery requests.

110. On September 19, 2007, respondent appeared at a case management conference and informed the court that he expected to be retained by the Romos by September 28, 2007. Respondent informed the court that even if he was not retained, he would assist the Romos with their responses to the outstanding discovery.

111. On October 13, 2007, the Romos paid respondent \$5,000 to represent them in the personal injury matter.

112. Thereafter, respondent failed to file a substitution of attorney into the personal injury matter.

113. Thereafter, respondent failed to provide responses to the outstanding discovery.

114. On November 6, 2007, respondent appeared at a case management conference in the personal injury matter on behalf of the Romos.

115. On December 7, 2007, plaintiff's counsel Marlin Costello sent respondent a letter asking that respondent file a substitution of attorney and provide responses to the outstanding discovery requests by December 15, 2007. Costello informed respondent that he would file a motion to compel if respondent did not provide the outstanding discovery responses. Soon after December 7, 2007, respondent received the letter.

116. Thereafter, respondent failed to respond to the letter, file a substitution of attorney or provided the requested discovery responses.

117. On January 10, 2008, Costello sent respondent a letter complaining that respondent had failed to return his telephone calls or reply to his letters. Costello informed respondent that he would file a motion to compel the discovery responses if respondent failed to provide the responses within five days. Soon after January 10, 2008, respondent received the letter, but respondent failed to respond to the letter and failed to provide the requested discovery responses.

118. On January 17, 2008, Costello sent respondent a letter indicating that he would file the motion to compel the discovery responses the following day.

119. Respondent did not inform the Romos that he had failed to provide the outstanding discovery responses.

120. Between January 2008 and May 2008, Ms. Romo regularly telephoned respondent to obtain a status update on her matter. Each time she telephoned, she left a message requesting that respondent provide her with a status update. Respondent received Ms. Romo's messages requesting a status update, but respondent failed to return her telephone calls and failed to provide her with a status update.

121. Between September 2007 and May 2008, respondent failed to provide services of any value to the Romos. Respondent failed to file a substitution of attorney, failed to prepare and serve the discovery responses and failed to perform any other services for the Romos.

122. In May 2008, Ms. Romo was able to reach respondent by telephone. During the discussion, Ms. Romo terminated respondent's services and requested that respondent provide her with an accounting of his services. She also requested that respondent refund her the \$5,000 she paid respondent in advanced fees since respondent had not performed any services to earn the fees. During the discussion, respondent indicated that he would send Ms. Romo an accounting.

123. At the time that Ms. Romo terminated respondent, respondent knew that the Romos had not provided the discovery responses that Costello had requested. At the time that Ms. Romo

terminated respondent, respondent failed to inform the Romos that he did not prepare or serve the discovery responses and therefore the Romos needed to prepare the responses or they would be subject to a motion to compel.

124. Before and including May 16, 2008, the Romos sought attorney Steven Geringer's assistance in obtaining a refund of the unearned fees from respondent. On May 16, 2008, Geringer sent respondent a letter requesting that respondent provide the Romos with an accounting by May 19, 2008. Soon after May 16, 2008, respondent received Geringer's letter, but failed to respond to it and failed to provide the Romos with an accounting.

125. On June 2, 2008, Costello filed a motion to compel discovery responses from the Romos and requested sanctions of \$565 against both Mr. and Mrs. Romo. On July 8, 2008, the court granted the plaintiff's motion to compel and imposed sanctions of \$565 against both Mr. and Mrs. Romo.

126. On May 4, 2009, Mrs. Romo sent respondent a letter requesting that respondent refund to her the \$5,000 she paid in advanced fees and requesting that respondent provide her with an accounting. Soon after May 4, 2009, respondent received the letter, but failed to respond to it, failed to return any funds to Mrs. Romo and failed to provide her with an accounting.

127. Respondent performed no services of value to the Romos.

128. Respondent failed to file a substitution of attorney, failed to prepare and file responses to the outstanding discovery and failed to take any action on behalf the Romos.

129. Respondent's failure to provide discovery responses resulted in the imposition of discovery sanctions against the Romos.

130. By failing to file a substitution of attorney, failing to provide the discovery responses, and failing to perform any services of value for the Romos, respondent intentionally, recklessly and repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Count Four(B) -Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries/Inform Client of Significant Developments]

131. Respondent willfully violated Business and Professions Code, section 6068(m), by failing to respond promptly to reasonable status inquiries of a client and failing to inform the client of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

132. Count Four(A) is incorporated by reference as if fully set forth herein.

133. Between January 2008 and May 2008, Ms. Romo regularly telephoned respondent to obtain a status update on her matter. Each time she telephoned, she left a message requesting that respondent provide her with a status update.

134. Although respondent received Ms. Romo's messages requesting a status update, respondent failed to return her telephone calls and failed to provide her with a status update.

135. By failing to respond to Mrs. Romo's telephone calls, respondent failed to respond promptly to reasonable status inquiries of client in a matter in which respondent had agreed to provide legal services.



136. Between September 2007 and May 2008, respondent failed to prepare or serve the outstanding discovery responses and failed to inform the Romos that he had not prepared or served the outstanding discovery responses.

137. At the time that Mrs. Romo terminated respondent, respondent failed to inform the Romos that the plaintiff intended to bring a motion to compel the outstanding discovery responses that could result in the imposition of discovery sanctions if the Romos failed to provide the responses.

138. By failing to inform the Romos that he had not prepared or served the outstanding discovery responses during his representation and by failing to inform the Romos when he was terminated that the defendants intended to bring a motion to compel that could result in the imposition of monetary sanctions, respondent failed to inform his clients of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Count Four(C) - Rules of Professional Conduct, rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

139. Count Four(A) is incorporated by reference as if fully set forth herein.

140. In May 2008, Mrs. Romo terminated respondent and requested an accounting of fees from respondent. On May 4, 2009, Mrs. Romo also requested a full refund of the \$5,000 advanced fees paid to respondent that respondent had not earned. Respondent received Mrs. Romo's request to provide her with an accounting and agreed to provide her with an accounting.

141. Soon after May 16, 2008, respondent received Geringer's letter requesting that respondent provide the Romos with an accounting.

142. Soon after May 4, 2009, respondent received Mrs. Romo's letter requesting that he refund her the entire advanced fee and provide her with an accounting. Although respondent received the requests for an accounting, failed to provide Mrs. Romo with an accounting. Although respondent received the request for a refund of the unearned fees, respondent has not refunded the unearned fees.

143. By failing to provide the Romos with an accounting, 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).

Count Four(D) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

144. Count Four(A) is incorporated by reference as if fully set forth herein.

145. On October 13, 2007, the Romos paid respondent \$5,000 to represent them in the personal injury matter.

146. Respondent performed no services of value for the Romos. Respondent did not earn any of the \$5,000 since respondent performed no services of value for the Romos.

147. At the time that the Romos terminated respondent, respondent owed the Romos a refund of \$5,000 in unearned fees.

148. In June 2008 and on May 4, 2009, Mrs. Romo requested that respondent refund the unearned fees. Although respondent received the requests, respondent has failed and refused to refund the unearned fees.

149. By failing to refund \$5,000 to the Romos, respondent has 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).

**THE BAKER MATTER - Case No. 08-O-11604 (NDC 1)**

**Count Five (A) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]**

150. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

151. On December 28, 2007, Robert and Hayley Baker hired and paid respondent \$1,000 in advanced fees to file a Chapter 7 bankruptcy petition.

152. Thereafter, respondent failed to prepare or file a bankruptcy petition on behalf of the Bakers or perform any other services of value for the Bakers.

153. Prior to May 14, 2008, the Bakers employed attorney Juan Falcon to prepare and file their bankruptcy petition. On May 14, 2008, Falcon filed the Bakers' bankruptcy petition.

154. By failing to perform any services of value for the Bakers, including, but not limiting to preparing and filing a Chapter 7 bankruptcy petition, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

**Count Five (B) - Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries]**

155. Count Five(A) is incorporated by reference as if fully set forth herein.

156. Between January 2009 and March 2009, the Bakers regularly telephoned respondent to obtain a status update on their matter. Each time they telephoned, they left a message requesting that respondent provide them with a status update on their matter. Although respondent received the Bakers' messages requesting a status update on their matter, respondent failed to respond to them and failed to provide the Bakers with a status update on their matter.

157. By failing to respond to the Bakers' messages, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

**Count Five (C) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]**

158. Count Five (A) is incorporated by reference as if fully set forth herein.

159. The Bakers paid respondent an advanced fee of \$1,000.

160. Respondent performed no services of value for the Bakers. At the time that respondent ceased performing services for the Bakers, respondent owed the Bakers a refund of \$1,000.

161. On December 9, 2008, the Bakers sent respondent a letter requesting that respondent refund the \$1,000 that they paid in advanced fees. Soon after December 9, 2008, respondent received the letter, but failed to respond to it and failed to return any funds to the Bakers.

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

**THE TRUST ACCOUNT MATTER - Case No. 09-O-10534 (NDC1)**

**COUNT SIX** - Business and Professions Code, section 6106 [Moral Turpitude-Issuance of NSF Checks]

163. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").

164. On November 24, 2008, the balance in respondent's trust account was \$80.18.

165. On November 25, 2008, respondent provided the Fresno County Superior Court with check number 1160, which was dated November 20, 2008. At the time that respondent provided check number 1160 to the Fresno County Superior Court, respondent knew or should have known that the check would be returned due to insufficient funds.

166. On November 25, 2008, Fresno County Superior Court deposited check number 1160.

167. On November 25, 2008, the balance in respondent's trust account was -\$279.82. On November 25, 2008, WestAmerica returned check number 1160 due to insufficient funds. On November 25, 2008, WestAmerica sent respondent a letter informing respondent that it returned check number 1160 because of insufficient funds.

168. On November 26, 2008, WestAmerica imposed a return check charge of \$23 due to respondent's issuance of check number 1160.

169. Between November 26, 2008 and December 2, 2008, the balance in respondent's trust account was \$57.18.

170. On December 2, 2008, check number 1160 was presented again to WestAmerica Bank for payment.

171. On December 2, 2008, the balance in respondent's trust account was --\$302.82. On December 2, 2008, WestAmerica again returned check number 1160 due to insufficient funds. On December 2, 2008, WestAmerica sent respondent a letter informing respondent that it returned check number 1160 because of insufficient funds.

172. On December 3, 2008, WestAmerica imposed a return check charge of \$28 due to respondent's issuance of check number 1160.

173. On December 3, 2008, the balance in respondent's trust account was \$29.18.

174. On December 4, 2008, Donna Losurdo received trust account check number 1159, which was dated November 14, 2008, in the amount of \$100.00. On December 4, 2008, Losurdo deposited check number 1159.

175. At the time that respondent provided check number 1159 to Losurdo, respondent knew or should have known that the check would be returned due to insufficient funds.

176. On December 4, 2008, the balance in respondent's trust account was --\$70.82. On December 4, 2008, WestAmerica bank returned check number 1159 due to insufficient funds. On December 4, 2008, WestAmerica sent respondent a letter informing respondent that it returned check number 1159 because of insufficient funds.

177. On December 5, 2008, WestAmerica imposed a return check charge of \$28 due to respondent's issuance of check number 1159.

178. Between December 5, 2008 and December 9, 2008, the balance in respondent's trust account was \$1.18.

179. On December 9, 2008, check number 1159 was presented again to WestAmerica Bank for payment. On December 9, 2008, the balance in respondent's trust account was --\$98.82. On December 9, 2008, WestAmerica bank returned check number 1159 due to insufficient funds. On December 9, 2008, WestAmerica sent respondent a letter informing respondent that it returned check number 1159 because of insufficient funds.

180. On December 10, 2008, WestAmerica imposed a return check charge of \$28 due to respondent's issuance of check number 1159.

181. On December 10, 2008, the balance in respondent's trust account was --\$26.82.

182. Between December 10, 2008 and December 18, 2008, the balance in respondent's trust account was -\$26.82.

183. On December 18, 2008, respondent provided trust account check number 1161, dated December 16, 2008, to the Madera County Superior Court in the amount of \$360.

184. At the time that respondent provided the Madera County Superior Court with check number 1161, respondent knew or should have known that there were insufficient funds available in the trust account to cover the check.

185. On December 18, 2008, Madera County Superior Court deposited check number 1161.

186. On December 18, 2008, the balance in respondent's trust account was -\$386.82. On December 18, 2008, WestAmerica rejected check number 1161 due to insufficient funds. On December 18, 2008, WestAmerica sent respondent a letter informing respondent that it returned check number 1161 because of insufficient funds.

187. On December 19, 2008, WestAmerica imposed a return check charge of \$33 due to respondent's issuance of check number 1161.

188. Between November 26, 2008 and December 29, 2008, the balance in respondent's trust account was -\$59.82.

189. On December 29, 2008, WestAmerica closed respondent's trust account because of the number of checks he wrote against insufficient funds.

190. When respondent provided check numbers 1159, 1160 and 1161 to the payees, respondent knew or should have known that there were insufficient funds available in respondent's trust account to cover the checks and that WestAmerica would return the checks due to insufficient funds available in the trust account.

191. By writing checks against insufficient funds, when respondent knew or should have known there were insufficient funds, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

Count Seven - Case Nos. 09-O-10534, 09-O-10954, 09-O-11002, 09-O-11402 (NDC 1)  
Business and Professions Code, section 6068(i) [Failure to Cooperate in State Bar Investigations]

192. Count One(A) through Count Four(D) and Count Six are incorporated by reference as if fully set forth herein.

### **The Trust Account Matter**

193. On February 10, 2009, the State Bar opened an investigation in the Trust Account Matter, Case number 09-O-10534.

194. On April 10, 2009, State Bar Investigator Dolores Ziegler wrote to respondent regarding respondent's conduct in the Trust Account Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

195. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Trust Account Matter on or before April 24, 2009. Soon after April 10, 2009, respondent received the letter, but failed to respond to the letter.

196. On April 24, 2009, Ziegler wrote another letter to respondent regarding respondent's conduct in the Trust Account Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter.

197. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

198. The April 24, 2009 letter enclosed a copy of the April 10, 2009 letter and requested that respondent respond in writing by May 8, 2009. Soon after April 24, 2009, respondent received the letter, but failed to respond to it.

### **The Losurdo Matter**

199. On March 6, 2009, the State Bar opened an investigation in the Losurdo Matter, Case number 09-O-10954.

200. On April 13, 2009, Ziegler wrote to respondent regarding respondent's conduct in the Losurdo Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

201. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Losurdo Matter on or before April 27, 2009. Soon after April 13, 2009, respondent received the letter, but failed to respond to the letter.

202. On April 28, 2009, Ziegler wrote another letter to respondent regarding respondent's conduct in the Losurdo Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid,

by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter. The April 28, 2009 letter enclosed a copy of the April 13, 2009 letter and requested that respondent respond in writing by May 8, 2009.

203. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

204. Soon after April 28, 2009, respondent received the April 28 letter, but failed to respond to it.

### **The Singleton Matter**

205. On March 9, 2009, the State Bar opened an investigation in the Singleton Matter, Case number 09-O-11002.

206. On April 14, 2009, State Bar Investigator Dolores Ziegler wrote to respondent regarding respondent's conduct in the Singleton Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Soon after April 14, 2009, respondent received the letter, but failed to respond to the letter.

207. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Singleton Matter on or before April 27, 2009.

208. On April 28, 2009, Ziegler wrote another letter to respondent regarding respondent's conduct in the Singleton Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter.

209. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

210. The April 28, 2009 letter enclosed a copy of the April 14, 2009 letter and requested that respondent respond in writing by May 8, 2009. Soon after April 28, 2009, respondent received the letter, but failed to respond to it.

### **The Cheatham Matter**

211. On March 25, 2009, the State Bar opened an investigation in the Cheatham Matter, Case number 09-O-11402.

212. On April 15, 2009, State Bar Investigator Dolores Ziegler wrote to respondent regarding respondent's conduct in the Cheatham Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Soon after April 15, 2009, respondent received the letter, but failed to respond to the letter.

213. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Cheatham Matter on or before April 29, 2009.

214. On April 30, 2009, Ziegler wrote another letter to respondent regarding respondent's conduct in the Cheatham Matter by placing the letter in a sealed envelope correctly addressed to respondent at his address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on the date on the letter.

215. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason.

216. The April 30, 2009 letter enclosed a copy of the April 15, 2009 letter and requested that respondent respond in writing by May 10, 2009. Soon after April 30, 2009, respondent received the April 30 letter, but failed to respond to it.

217. By failing to provide a response to the allegations regarding respondent's conduct in the Trust Account, Losurdo, Singleton and Cheatham Matters, respondent failed to cooperate in disciplinary investigations, in willful violation of Business and Professions Code, section 6068(i).

**THE LOPEZ MATTER - Case No. 09-O-17483 (From Second Notice of Disciplinary Charges filed February 10, 2010, hereinafter "NDC 2")**

Count One (A) - Business and Professions Code, section 6106 [Moral Turpitude- Misappropriation]

218. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").

219. Prior to November 2007, respondent represented Jesus Lopez in the dissolution matter *Maria Lopez v. Jesus Lopez*, Madera County Superior Court, Case Number MFL003758.

220. On November 13, 2007, respondent received a cashier's check from Jesus Lopez made payable to Maria Lopez, which represented Maria Lopez's funds for her share of the family residence.

221. Soon after November 13, 2007, Maria Lopez informed respondent that her portion of the family residence was supposed to be \$70,000. Therefore, she was unwilling to accept the \$65,000.

222. On January 24, 2008, the court ordered respondent to deposit the check into an interest bearing trust account for the benefit of the Lopezes until they were able to resolve their dispute regarding the amount of the payout to Maria Lopez. On January 24, 2008, respondent deposited the \$65,000 check into the trust account.

223. Respondent was obligated to maintain the entire \$65,000 in the trust account until paid out for the benefit of the Lopezes. Respondent was not entitled to collect any of the \$65,000.

224. On April 4, 2008, Maria Lopez and Jesus Lopez reached an agreement regarding Maria Lopez's payout for the family residence and agreed that Maria Lopez was entitled to \$65,000 that respondent was holding in trust, plus an additional \$2,000, that Jesus Lopez paid directly to Maria Lopez.

225. On April 4, 2008, the balance in the trust account was \$59,123.72. As of April 4, 2008, respondent misappropriated at least \$5,876.28 from Maria Lopez.

226. On April 4, 2008, respondent provided Maria Lopez with a check number 1150 in the amount of \$65,000 drawn on the trust account.

227. On April 7, 2008, WestAmerica Bank rejected check number 1150 since it was drawn against insufficient funds. On April 7, 2008, WestAmerica Bank sent respondent a letter indicating that it had rejected check number 1150 since it was drawn against insufficient funds. Respondent received the letter.

228. Between April 7, 2008 and June 5, 2008, Maria Lopez repeatedly requested that respondent provide her with her funds. Respondent received the requests, but failed to provide Maria Lopez with her funds.

229. On June 10, 2008, Maria Lopez filed a motion seeking an order requiring respondent to pay her the \$65,000 to which she is entitled.

230. On July 3, 2008, the balance in the trust account was \$49,675.86. As of July 3, 2008, respondent had misappropriated \$15,324.14 from Maria Lopez.

231. On July 3, 2008, respondent appeared at a hearing and gave a false explanation to the court regarding why he had not paid Maria Lopez her funds. At the hearing, the court instructed respondent to pay Maria Lopez all of her funds immediately.

232. On July 3, 2008, respondent provided Maria Lopez with check number 1156 in the amount of \$49,000, which cleared the trust account that same day. Respondent also gave Maria Lopez a promissory note for \$16,000, in which he promised to pay her the funds, with ten percent interest, by September 9, 2008.

233. On September 11, 2008, Maria Lopez extended the promissory note deadline until September 25, 2008. Thereafter, respondent failed to pay Maria Lopez any funds.

234. On October 16, 2008, respondent appeared at a court hearing and provided the court with another false explanation regarding his failure to provide Maria Lopez with all of her funds.

235. On January 22, 2009, respondent appeared at a court hearing and informed the court that he would have \$2,500 by the end of the month and hoped to have the remainder paid to Maria Lopez by March 2009.

236. On April 20, 2009, respondent stated at a court hearing that he had made every effort to obtain the money to pay Maria Lopez.

237. On April 20, 2009, respondent offered to provide Maria Lopez with a promissory note secured by a deed of trust on his home, with a due date of November 1, 2009. Respondent had no facts or other basis on which to claim, as he stated in the letter, that he "may have been the victim of embezzlement."

238. To date, respondent has failed and refused to pay Maria Lopez any of the \$16,000 that he owes her.

239. Respondent used Maria Lopez's funds for his own use and benefit and not for the use and benefit of Maria Lopez. Respondent misappropriated \$16,000 from Maria Lopez.

240. By misappropriating \$16,000 from Maria Lopez, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section



Count One (B) - Business and Professions Code, section 6106 [Moral Turpitude-Misrepresentations to State Bar]

241. Count One (A) is incorporated by reference as if fully set forth herein.

242. On January 24, 2008, respondent withdrew from the trust account \$6,000 that belonged to Maria Lopez and used it for his own personal use and benefit and not for the use or benefit of Maria Lopez or Jesus Lopez.

243. On February 25, 2008, respondent withdrew from the trust account \$5,000 that belonged to Maria Lopez and used it for his own personal use and benefit and not for the use or benefit of Maria Lopez or Jesus Lopez.

244. On March 3, 2008, respondent withdrew from the trust account \$5,000 that belonged to Maria Lopez and used it for his own personal use and benefit and not for the use or benefit of Maria Lopez or Jesus Lopez.

245. As of on March 3, 2008, respondent knew he had withdrawn and used for his own personal use and benefit \$16,000 that belonged to Maria Lopez.

246. Respondent's failure to pay Maria Lopez her funds was the result of respondent's misappropriation of Maria Lopez's funds, and was not caused by bank error, by respondent's mistaken deposit of trust account funds into another account or by a bookkeeping error.

247. On April 22, 2008 and May 8, 2008, the State Bar Intake Unit wrote to respondent requesting that respondent explain why check number 1150 was returned due to insufficient funds.

248. On May 23, 2008, respondent wrote a letter to the State Bar claiming that his "office bookkeeper crossed deposits between [his] accounts which was not noticed, thus creating an inaccurate balance for [his] client trust account ..." and that he "was working with the payee to deliver the funds and resolve the matter. I have also spoken to my in office bookkeeper about the error and the importance of being accurate with my accounts. I have taken the necessary steps to resolve this matter and to make sure it does not reoccur."

249. In truth and in fact, respondent knew that he had misappropriated the money. In truth and in fact, respondent made false statements to the State Bar when he blamed the insufficient funds on a bookkeeping error and crossed deposits. In truth and in fact, respondent was not working with Maria Lopez to resolve the issue and respondent had not taken any steps to resolve the matter since Maria Lopez was required to file multiple motions to receive any funds.

250. When respondent made the statements, he knew they were false.

251. Respondent made the statements for the purpose of convincing the State Bar to close the inquiry. Based upon respondent's misrepresentations, the State Bar Intake Unit closed the inquiry until a later date, when the inquiry was reopened on receipt of additional evidence.

252. By making misrepresentations to the State Bar, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

Count One (C) - Business and Professions Code, section 6106 [Moral Turpitude-Misrepresentations to Court]

253. Count One (A) is incorporated by reference as if fully set forth herein.

254. On July 3, 2008, respondent falsely stated to the Superior Court that the reason Lopez did not receive her funds was that he had some of his staff doing his accounting and the returned checks were not properly accounted for. Respondent falsely explained that he had to go through his bank and had to deal with the State Bar, but that all of the issues had been resolved. Respondent also falsely claimed that he would go back to his office after the hearing provide Lopez with a check for \$65,000, which Lopez could pick up at 1:15 p.m that day. At the time these statements were made to the court, respondent knew that the reason Lopez did not receive her funds was because respondent had misappropriated them.

255. In truth and in fact, respondent knew or should have known that he could not provide Lopez with all of her funds at 1:15 p.m. on July 3, 2008 because respondent had misappropriated approximately \$16,000 from Lopez.

256. Respondent made misrepresentations to the Madera County Superior Court when respondent claimed that he would provide Lopez with a check for \$65,000 at 1:15 p.m. on July 3, 2008 when respondent knew or should have that he only had \$49,000 in available funds.

257. By making misrepresentations to the Madera County Superior Court, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

Count One (D) - Business and Professions Code, section 6106 [Moral Turpitude-NSF Checks]

258. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account").

259. Respondent provided the following check numbers, which posted on the following dates, to the following payees for the following amounts, when the trust account had the following balance, which would have resulted and did result in the following negative balances:

Date Check Posted	Check Number	Payee	Check Amount	Account Balance Before Check	Account Balance After Check
4/7/08	1150	Maria Lopez	\$65,000	\$59,123.72	-\$5,876.28
11/20/08	1160	Fresno County Superior Court	\$360	\$66.78	-\$279.82
12/4/08	1159	Donna Losurdo	\$100	\$29.18	-\$70.82
12/18/08	1161	Madera County Superior Court	\$360	-\$26.82	-\$386.82

260. At the time that respondent provided the checks, respondent knew or should have known that he had insufficient funds available in the trust account to fund the checks.

261. Respondent repeatedly issued checks against insufficient funds.

262. By repeatedly issuing checks against insufficient funds, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code,

section 6106.

**THE GAUDINIER MATTER - Case No. 09-O-11943 (NDC 2)**

**Count Two (C) - Business and Professions Code, section 6106 [Moral Turpitude-Misrepresentation]**

263. At all relevant times, respondent maintained WestAmerica trust account number 6945 ("trust account"). On or about August 11, 2008, Cheryl Gaudinier employed respondent to file a Chapter 7 bankruptcy.

264. In August 2008, Gaudinier paid respondent \$1,100, which included \$801 in attorney's fees and \$299 for the filing bankruptcy petition filing fee.

265. Respondent was obligated to deposit the \$299 filing fee in his trust account since it was an advanced cost; respondent failed to deposit the \$299 into his trust account.

266. On October 31, 2008, the balance in respondent's trust account was \$66.83.

267. On November 20, 2008, respondent filed a chapter 7 bankruptcy on behalf of Gaudinier in the United States Bankruptcy Court, Eastern District. Accompanying the bankruptcy petition, respondent submitted an Application to Pay Filing Fee In Installments on behalf of Gaudinier claiming that Gaudinier was "unable to pay the filing fee, except in installments." Respondent requested that Gaudinier be permitted to pay the filing fee in three installments. Respondent signed the application on Gaudinier's behalf with an electronic signature.

268. On November 20, 2008, the Court issued an order granting Gaudinier's application to pay the bankruptcy filing fee in three installments, with \$100 due on November 26, 2008, \$100 due on December 3, 2008 and \$99 due on December 10, 2008.

269. On December 3, December 10, 2008, respondent made payments of \$100 from a general account and not from his trust account.

270. On December 17, 2008, respondent made a payment of \$99 from a general account and not from his trust account.

271. In truth and in fact, Gaudinier did not require permission to pay the filing fee in installments since she had provided respondent with the entire filing fee in August 2008. Respondent knew that Gaudinier did not require an order permitting her to pay the filing fee in installments because she had given respondent the full filing fee in August 2008.

272. In truth and in fact, respondent requested the extension of time for his own personal benefit and not for the benefit of Gaudinier.

273. Respondent made a misrepresentation to the bankruptcy court when respondent stated in the November 20, 2008 application that Gaudinier was unable to pay the filing fee, except in installments, when respondent knew that Gaudinier had paid respondent the \$299 filing fee in August 2008.

274. By making a misrepresentation to the bankruptcy court, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

**Count Two (D) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]**

275. On November 20, 2008, Gaudinier provided respondent a certificate of Debtor Education documenting Gaudinier's completion of a course on personal financial management.

276. Thereafter, respondent failed to provide the bankruptcy court with a copy of the certificate and failed to perform any further services for Gaudinier.

277. On December 12, 2008, the bankruptcy court sent respondent a notice informing respondent that he must file a certificate of completion of a course on financial management or the case would be dismissed. Thereafter, respondent failed to file the certificate of completion of a course on financial management.

278. On February 24, 2009, the bankruptcy court closed Gaudinier's case without entry of discharge because respondent failed to take any action on behalf of Gaudinier.

279. On April 24, 2009, Gaudinier filed an ex parte motion to reopen her bankruptcy case on the grounds that respondent's failure to perform resulted in the closure of her case.

280. On April 28, 2009, the bankruptcy court issued an order granting Gaudinier's motion. On April 28, 2009, the bankruptcy court also issued an order directing respondent to appear on May 13, 2009 and show cause why he should not be ordered to disgorge fees or be sanctioned for his failure to represent Gaudinier.

281. On May 13, 2009, respondent appeared and the court ordered respondent to pay Gaudinier's filing fee to reopen her bankruptcy case and also ordered respondent to disgorge \$675 to Gaudinier as a result of his failure to perform. In May 2009, respondent paid Gaudinier's filing fee and refunded her \$675.

282. By failing to provide any services to Gaudinier after he filed the bankruptcy petition, including failing to file the certificate of completion of a course on financial management and by permitting Gaudinier's case to be closed because respondent failed to take any action on Gaudinier's behalf, respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Count Two (E) - Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries]

283. Between December 13, 2008 and March 27, 2009, Gaudinier telephoned respondent's office repeatedly and left a message each time requesting that respondent provide her with a status update on her matter. Respondent received the messages, but failed to respond to them and failed to provide Gaudinier with a status update on her matter.

284. By failing to respond to Gaudinier's status update requests, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

**THE THUN MATTER - Case No. 09-O-15881 (NDC 2)**

Count Three (A) - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

285. On October 30, 2008, Terry Thun employed respondent to represent him in a marital dissolution matter. At the time that Thun employed respondent, Thun explained that he and his wife wanted respondent to take immediate action to dissolve their marriage. Thun wanted to transfer title of the family residence to his wife as quickly as possible so that he no longer would be responsible for the monthly mortgage payment. On October 30, 2008, Thun paid respondent \$3,000 in advanced fees.

286. On December 16, 2008, respondent filed the petition for dissolution of marriage with the Madera County Superior Court.

287. Thereafter, respondent failed to cause service of the petition on Thun's wife and failed to take any action to pursue the dissolution for Thun.

288. On December 17, 2008, attorney Marvin Brown, the lawyer for Thun's wife, filed a petition for dissolution with the Madera County Superior Court and served Thun with it on December 22, 2008.

289. Thereafter, respondent failed to file a response to the petition filed by Thun's wife.

290. On February 9, 2009, respondent appeared at a court hearing and stipulated to mediation.

291. Between March 23, 2009 and June 23, 2009, Thun sent respondent several e-mails requesting that respondent complete the divorce as soon as possible so that Thun did not have to make the July 2009 mortgage payment. Respondent received the messages, but failed to respond to them and failed to take any action to complete the dissolution on behalf of Thun.

292. On August 21, 2009, Thun terminated respondent.

293. Between August 21, 2009 and September 8, 2009, Thun requested several times that respondent execute a substitution of attorney. Respondent received the requests, but failed to provide Thun with an executed substitution of attorney.

294. On September 10, 2009, Thun filed a motion to remove respondent as counsel of record. Also on September 10, 2009, respondent sent Thun a letter acknowledging that he no longer represented Thun.

295. On October 7, 2009, the court granted Thun's motion to remove respondent as counsel for Thun.

296. On October 28, 2009, Brown completed the paperwork necessary to complete the dissolution.

297. Respondent performed no services of value for Thun since respondent took no action to pursue the dissolution on behalf of Thun.

298. By failing to perform any services of value for Thun, including filing the dissolution petition immediately after Thun employed him, responding to the dissolution petition filed by Thun's wife, engaging in settlement discussion with Thun's wife so that the divorce could be finalized quickly and failing to execute the substitution of attorney, respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

Count Three (B) - Business and Professions Code, section 6106 [Moral Turpitude-Misrepresentation]

299. Count Three (A) is incorporated by reference as if fully set forth herein.

300. On September 11, 2009, respondent filed a response and supporting documentation to the petition Thun's wife filed on December 18, 2008. Respondent executed the proof of service attached to the response and supporting documentation, stating under penalty of perjury that respondent mailed the response and supporting documentation to Brown on February 9, 2009.

301. In truth and in fact, respondent did not serve Brown by mail on February 9, 2009. In truth and in fact, respondent provided Brown with copies of the documents he filed on September 11, 2009.

302. In truth and in fact, the only copy of the response to the petition respondent ever provided Brown contained a court endorsed stamp of "September 11, 2009."

303. Respondent made a misrepresentation to the Madera County Superior Court when respondent submitted a proof of service containing false information.

304. By making a misrepresentation in the proof of service, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

Count Three (C) - Business and Professions Code, section 6068(m) [Failure to Respond to Client Inquiries]

305. Between March 23, 2009 and June 23, 2009, Thun sent respondent several e-mails requesting that respondent complete the divorce as soon as possible so that Thun did not have to make the July 2009 mortgage payment. Respondent received the messages, but failed to respond to them.

306. Between June 25, 2009 and July 15, 2009, Thun sent respondent several emails and left him several telephone messages requesting that respondent provide him with a status update on his matter. Respondent received the messages, but failed to respond to them and failed to provide Thun with a status update.

307. By failing to respond to Thun's status update requests, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Count Three (D) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

308. Count Three (A) is incorporated by reference as if fully set forth herein.

309. On July 21, 2009, Thun terminated respondent's services. At the time Thun terminated respondent, respondent owed Thun a refund of \$3,000.

310. Respondent performed no services of value for Thun since respondent took no action to pursue the dissolution on Thun's behalf.

311. On October 20, 2009, Thun sent respondent a letter requesting that respondent refund the advanced fees of \$3,000. Although respondent received the letter, respondent failed to respond to it and failed to refund any money to Thun.

312. By failing to refund any money to Thun, 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).

**THE COLBY MATTER - Case No. 09-O-18038 (NDC 2)**

Count Four (A) - Business and Professions Code, section 6106 [Moral Turpitude-Misrepresentation]

313. On September 9, 2009, Brian Colby employed respondent to represent him in a Chapter 7 bankruptcy proceeding. At the time that he employed respondent, he paid respondent \$1,000.00 in advanced fees and \$299 for the bankruptcy petition filing fee.

314. At the time Colby employed respondent, respondent informed Colby it was important that Colby file his bankruptcy petition before the end of September, when a change to the bankruptcy rules would impair his ability to qualify for bankruptcy protection.

315. In truth and in fact, at the time that Colby employed respondent, Colby did not qualify for bankruptcy and respondent knew that Colby did not qualify. Respondent made misrepresentations to Colby when respondent informed Colby that he could qualify for bankruptcy.

316. On September 21, 2009, Colby went to respondent's office to sign the bankruptcy petition and supporting documentation. At that time, respondent informed Colby that he would file his bankruptcy petition in September.

317. Thereafter, respondent failed to file any bankruptcy documentation or take any further action on behalf of Colby.

318. On October 5, 2009, respondent informed Colby that he did not qualify for bankruptcy.

319. On October 11, 2009, Colby terminated respondent and sent him an e-mail requesting that respondent refund his unearned fees and return his documentation. Respondent received the e-mail, but failed to respond to it, failed to refund any fees and failed to return his documentation.

320. On October 13, 2009, Colby sent respondent a letter informing respondent that he was terminated and requesting that respondent refund all of the advanced fees and costs. Respondent received the letter, but failed to respond and failed to refund any funds to Colby.

321. Respondent made a misrepresentation to Colby when respondent claimed that Colby would qualify for bankruptcy, but only if he filed before the end of September. In truth and in fact, respondent knew that Colby did not qualify for bankruptcy. Respondent made the misrepresentation so he could collect the \$1,000.

322. Respondent's misrepresentation caused Colby to pay \$1,000, even though respondent knew that Colby would not qualify for bankruptcy.

323. By taking Colby's money to file for bankruptcy when respondent knew that Colby would not qualify and by refusing to refund Colby's money after respondent failed to file for bankruptcy, respondent's misrepresentations caused harm to Colby. As a result thereof, respondent committed acts of moral turpitude, dishonesty and corruption, in willful violation of Business and Professions Code, section 6106.

Count Four (D) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

324. Count Four (A) is incorporated by reference as if fully set forth herein.

325. On October 11, 2009, Colby terminated respondent's services. Respondent performed no services of value for Colby.

326. At the time Colby terminated respondent, he owed Colby a refund of \$1,000, \$701 of which was unearned fees.

327. On October 11, 2009 and October 13, 2009, Colby requested that respondent refund the advanced fees of \$1,000. Although respondent received the requests, respondent failed to

respond to them and failed to refund any money to Colby.

328. By failing to refund any money to Colby, 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).

**Count Four (E)** - Rules of Professional Conduct, rule 3-700(D)(1) [Failure to Release File]

329. Count Four (A) is incorporated by reference as if fully set forth herein.

330. On October 11, 2009, Colby terminated respondent and requested that respondent return his client file. Although respondent received the request, respondent failed to respond to it and failed to return Colby's client file.

331. By failing to return Colby's client file, respondent failed to promptly release to his client, upon termination and upon the request of the client, all client papers and property, Rules of Professional Conduct, rule 3-700(D)(1).

**THE SANCHEZ MATTER - Case No. 09-O-12467 (NDC 2)**

**Count Five (A)** - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

332. In April 2003, Nicholas Sanchez employed to represent him in a dissolution of a business partnership.

333. Between April 29, 2003 and October 6, 2005, Sanchez paid respondent \$4,400 in advanced fees.

334. In January 2005, respondent provided Sanchez with a draft complaint and verification form that required Sanchez's signature.

335. In January 2005, Sanchez returned the signed verification to respondent.

336. Thereafter, respondent ceased performing any services for Sanchez, including failing to file a complaint for dissolution of the partnership and failing to take any action to dissolve the partnership.

337. In April 2006, Sanchez terminated respondent and employed attorney Stanley Friedman.

338. On April 18, 2006, Friedman filed a complaint on behalf of Sanchez in Madera County Superior Court.

339. By failing to perform any services of value to Sanchez, including, but not limited to, filing a complaint for dissolution of the partnership, respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

**Count Five (B)** - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

340. Count Five (A) is incorporated by reference as if fully set forth herein.

341. In April 2006, Sanchez terminated respondent. As of the time he was terminated, respondent had provided no services of value to Sanchez.



342. At the time that Sanchez terminated respondent, he owed respondent a refund of \$4,400 because respondent failed to perform any services of value to Sanchez.

343. On August 4, 2009 and December 14, 2009, Sanchez requested that respondent refund the unearned fees. Respondent received the requests, but failed to refund any fees to Sanchez.

344. By failing to refund the unearned fees to Sanchez, 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).

**THE MAHON MATTER - Case No. 09-O-10021 (NDC 2)**

Count Six (A) - Rules of Professional Conduct, rule 3-700(D)(2) [Failure to Refund Unearned Fees]

345. In December 2004, Ann Mahon purchased a farm. After the purchase, she discovered that the farm did not have an adequate water source.

346. In December 2005, Mahon filed a lawsuit in Madera County Superior Court against the owners of the adjacent property and the real estate agent who represented her in the sale.

347. On February 23, 2006, Mahon employed respondent to represent her in lawsuit and paid him \$5,000 in advanced fees. At the time that she employed him, she agreed to pay him on an hourly basis.

348. In May 2007, Mahon terminated respondent because respondent failed to prosecute her matter. Mahon tried to find another attorney to represent her and after speaking to others, had no choice but to return to respondent in that he was still in possession of the \$5,000 advanced fees.

349. In October 2007, Mahon rehired respondent after she was unable to find another attorney to represent her. At the time that she rehired respondent, she agreed to pay respondent on an hourly basis and respondent agreed that he would charge her no more than \$15,000 to represent her through trial.

350. Thereafter, respondent failed to perform any services of value to prosecute the lawsuit on behalf of Mahon, including failing to propound discovery, prosecute Mahon's matter, prepare for trial or respond to motions in limine. Any minimal services he did provide her were of no value because they resulted in no benefit to Mahon.

351. In October 2007, Mahon paid respondent \$3,500 in advanced fees. In August 2008, Mahon paid respondent \$1,000 in advanced fees. On August 21, 2008, the court set a trial date of September 8, 2008.

352. On September 1, 2008, the court continued the trial to December 1, 2008.

353. Between September 2008 and December 2008, Mahon personally prepared documents that she forwarded to respondent for filing with the court, including notices to appear at trial, jury instructions, oppositions to motions in limine and declarations.

354. On November 11, 2008, Mahon's boyfriend agreed to and did provide construction services to respondent in exchange for credit toward payment of Mahon's legal services. Thereafter, Mahon's boyfriend sent an invoice for \$3,412 for labor and materials, which respondent agreed to credit against the amount Mahon owed in legal fees.

355. On December 1, 2008 and December 8, 2008, the court continued the trial to January 21, 2009.

356. On December 10, 2008, Mahon agreed to settle a portion of her case for \$75,000.

357. On December 15, 2008, Mahon met with respondent to sign the settlement documents. When Mahon questioned why the settlement documents called for the settlement check to be made payable to respondent alone, respondent told Mahon that he, respondent, would get the money. Then, he would decide how to disburse it, including, whether he would distribute any portion of the funds to Mahon. At the conclusion of the meeting, respondent and Mahon agreed to end the attorney client relationship.

358. On December 16, 2008, respondent sent Mahon a letter indicating that he intended to file a lien in the lawsuit against the settlement proceeds.

359. On December 17, 2008, Mahon met with respondent and requested that he provide her with an accounting. Thereafter, respondent failed to provide her with an accounting.

360. On December 17, 2008, Mahon filed a substitution of attorney, substituting herself in pro per.

361. On December 18, 2008, respondent filed a lien against the settlement proceeds in the pending lawsuit. As a result of respondent's lien, Mahon was unable to receive her portion of the settlement proceeds.

362. On December 31, 2008, Mahon sent respondent a letter requesting that respondent refund the majority of unearned fees she paid him. Respondent received the letter.

363. On January 21, 2009, respondent informed Mahon that he would not release the lien unless she agreed to pay him \$10,000 from the settlement proceeds. Respondent failed to provide her with an accounting justifying his entitlement to collect \$10,000 in attorney's fees.

364. On January 21, 2009, respondent coerced Mahon into signing a settlement agreement in which she agreed to pay respondent \$10,000 from the settlement proceeds to settle the dispute regarding the amount of attorney's fees respondent was owed. Mahon needed any portion of the settlement proceeds and her dispute with respondent was delaying her receipt of the funds.

365. On February 12, 2009, Mahon sent respondent a letter asking that respondent provide her with an accounting and a refund of unearned fees. Respondent received the letter soon after it was sent, but failed to respond to it and failed to provide Mahon with an accounting or a refund of unearned fees.

366. Because respondent provided no services of value to Mahon, respondent was not entitled to collect any attorney's fees after he was rehired in October 2007. As of February 2009, respondent arguably owed Mahon a refund of all of the fees she paid him after she rehired him, or \$4,500 she paid before settlement of her lawsuit, \$3,412 for construction services she provided respondent and \$10,000 he received from the settlement proceeds, for a total of \$17,912.

367. By failing to refund any of the fees he received, 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).

Count Six (B) - Rules of Professional Conduct, rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

368. Count Six (A) is incorporated by reference as if fully set forth herein.

369. On December 17, 2008 and February 12, 2009, Mahon requested that respondent provide her with an accounting. Although respondent received the requests, he failed provide Mahon with an accounting.

370. By failing to provide Mahon with an accounting, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

### **THE SIMON MATTER – Unfiled case number 10-O-02760**

#### **Facts.**

Julia Simon ("Simon") employed respondent in April, 2008 to prepare and file on her behalf a Chapter 13 bankruptcy. Shortly thereafter, the decision was made to file a Chapter 7 proceeding instead.

Respondent and Simon agreed upon a total attorney fee and filing fee combined cost of \$1,500 to complete the bankruptcy filing. The filing fee portion was \$299.

On July 16, 2008, Simon paid the full \$1,500 in attorney's fees and filing fee.

Thereafter, respondent did no work at all for Simon. Respondent did not file any petition for bankruptcy and did not refund her money.

Between April, 2008 and May 15, 2009, Simon had 5-7 contacts with respondent. By May 15, 2009, Simon became concerned about not having any petition filed and no explanation from respondent. She began to send e-mails to respondent on May 15, 2009 to document her attempts to contact him. Simon's e-mails asked for the bankruptcy case number respondent had previously promised to give her. Over time, Simon's e-mails asked respondent for a full refund.

Between May 15, 2009 and January 7, 2010, Simon sent respondent at least six (6) e-mails requesting status updates, her bankruptcy case number and, finally, a full refund.

Respondent only responded in January, 2010 by e-mail to confirm receipt of her e-mails, but provided no information regarding her case or the status of her refund. In his final e-mail to her of January 7, 2010, respondent stated that he was out of his office, but that he "will process your case and have a case number for you when I return to my office later today."

Respondent did not process her bankruptcy case and did not ever provide her with a case number, on January 7, 2010 or on any other date.

Respondent never filed Simon's petition. Respondent never refunded Simon's money. respondent never provided Simon with a substantive update on the status of her case, nor did he ever tell Simon that he had not filed anything on her behalf.

#### **Conclusions of law.**

By the conduct described above, including failing to file any petition for Simon after having received full payment for fees and costs in July, 2008, respondent failed to perform competently, in willful violation of Rules of Professional Conduct, rule 3-110(A).

By the conduct described above, including failing to substantively respond to Simon's requests for status updates on the filing of her bankruptcy petition between May, 2009 and January, 2010, and by failing to tell Simon that respondent had in fact not filed anything for her at all, respondent failed to

respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

By the conduct described above, respondent did not earn any of the money he collected as advanced fees from Simon, nor did he use the filing fee he collected in advance from her to pay a filing fee, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in violation of Rules of Professional Conduct, rule 3-700(D)(2).

### **THE WORKS MATTER – Unfiled case number 10-O-05972**

#### **Facts.**

On December 15, 2007, David Works, IV ("Works") hired respondent to represent Works in a child custody matter in Madera Superior Court case number SFL00129. On December 15, 2007, Works paid respondent \$2,500 for the representation – the full fee quoted to him by respondent – which was to include respondent's appearances at court and preparing and filing related documents on Works' behalf.

Thereafter, respondent performed no legal services of any kind for Works. Respondent never substituted into the existing child custody matter; never appeared at scheduled hearings – including one regarding a restraining order – and never filed any documents on Works' behalf.

As a direct result of respondent's failure to appear, file or argue on his behalf, Works in fact had a restraining order issued against him in which Works was ordered to keep away from the very child respondent was hired to assist in obtaining custody.

Between his hiring in December, 2007 and November, 2009, Works called respondent's office approximately 10-15 times to inquire regarding the status of his custody case and to find out whether and to what extent respondent had filed documents and otherwise pursued the case strategy he had discussed with Works. Each time Works called his office, an office assistant indicated respondent was not in or not available, so Works left a message each time asking for a return call and status updates.

Respondent received these messages, but failed to respond to Works or to otherwise provide Works with a status update.

On November 25, 2009, Works personally appeared at respondent's office, determined to get the information that none of his phone calls and messages had generated. Respondent was present at his office. Works had by then determined that he needed a different attorney and had in fact hired another attorney by the time of his November 25 visit to respondent. On November 25, 2009, Works terminated the employment and demanded the return of his file materials and a full refund of his advanced fees which had not been earned, which amounted to the full fee paid in advance.

On November 25, 2009, respondent wrote a letter to Works confirming the termination of employment and his agreement to return Works' files. Respondent also promised to refund the "full amount of \$2,500.00 on or before January 25, 2010."

On January 25, 2010, Works telephoned respondent because Works had not received the promised refund. Respondent admitted he did not have the funds and requested that Works accept monthly payments of \$500 until paid in full. Works would not accept the payment plan in that he now needed to pay another attorney and had received no benefit at all from respondent for the two full years respondent had his money but performed no services.

To date, respondent has never refunded any amount of the unearned fees to Mr. Works.

**Conclusions of law.**

By the conduct described above, including failing to file any documents and failing to make scheduled court appearances for Works after having received full payment of his quoted fees in December, 2007, respondent failed to perform competently, in willful violation of Rules of Professional Conduct, rule 3-110(A).

By the conduct described above, including failing to respond to Works' repeated requests for status updates on his custody case between January, 2008 and November, 2009, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in violation of Business and Professions Code, section 6068(m).

By the conduct described above, respondent did not earn any of the money he collected as advanced fees from Works because respondent failed to perform any legal services whatsoever, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in violation of Rules of Professional Conduct, rule 3-700(D)(2).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was July 17, 2010.

**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-10954	Count Three (B) (NDC 1)	Bus. and Prof. § 6106
09-O-10954	Count Three (D) (NDC 1)	Bus. and Prof. § 6106
09-O-11943	Count Two (A) (NDC 2)	Rules Prof. Conduct 4-100(A)
09-O-11943	Count Two (B) (NDC 2)	Bus. and Prof. § 6106
09-O-11943	Count Two (F) (NDC 2)	Rules Prof. Conduct 3-3-700(D)(2)
09-O-18038	Count Four (B) (NDC 2)	Rules Prof. Conduct, rule 4-100(A)
09-O-18038	Count Four (C) (NDC 2)	Bus. and Prof. § 6106

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 16, 2010, the prosecution costs in this matter are approximately \$ 13,800,00. 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.

**AGGRAVATING CIRCUMSTANCES, CONTINUED FROM STIPULATION, PAGE 2**

**Client Harm:**

Respondent's conduct significantly harmed Maria Lopez because he has deprived her of her funds since April 2008. Because respondent failed to pay the funds, Maria Lopez was required to drive over 320 miles round trip from her residence in El Dorado, California to court hearings at the Madera County Superior Court on at least seven occasions. Maria Lopez was forced to incur the expense of the trips and also was forced to take time off work on those days to attend the court hearings.

## MITIGATING CIRCUMSTANCES; FACTS IN SUPPORT THEREOF

- On or about July 31, 2008, the building in which respondent maintained his law office was burned in a suspicious fire. The cause of the fire was later the subject of a confession to arson by a unstable client of another attorney who was located in the same office building as respondent. The suspect committed suicide when attempts were made to arrest him. Respondent's client file materials, office equipment as well as personal property were completely destroyed. Respondent was at a total loss as to his client list, client contact information, upcoming court appearances and other deadlines, and file recreation.
- During most of the years 2007 and 2008, respondent was the target of a joint federal and local criminal investigation relating to child pornography which included a warrant search of respondent's home. In fact respondent was never charged with any crime related to the joint investigation. The investigation resulted in the arrest of respondent's relative by marriage who was charged and convicted of the federal crimes. While the investigation was pending, respondent suffered tremendous stress and related home search. Because of the investigation and the conviction of the relative by marriage, respondent's marriage and family were severely strained, which also caused severe emotional stress.
- In addition to the aforementioned extreme stressors, respondent's niece, to whom he was particularly close, passed away on August 16, 2009 after a long and painful illness. Her loss caused further extreme emotional pain and suffering to respondent.
- Respondent has no prior record of discipline since his admission in December, 1996, or approximately 10 years before the any misconduct at issue herein began.
- Respondent agreed to the imposition of discipline, thus demonstrating a recognition of wrongdoing and obviating the need for the State Bar and State Bar Court to expend further resources, evidencing cooperation with the State Bar to resolve these matters.
- Respondent made restitution to Maria Lopez in the amount of \$16,000.00, representing the principal portion only (no interest) owed, but only in conjunction with this settlement and well after the force of disciplinary proceedings began.

## AUTHORITIES SUPPORTING DISCIPLINE

Standards for Attorney Discipline, standards 2.2, 2.3, 2.4, 2.6(a);

*Guzzetta v. State Bar* (1987) 43 Cal.3d 962 [regarding failure to use entrusted funds for specified purpose; six months actual suspension];

*Bledsoe v. State Bar* (1991) 52 Cal.3d 1074 [regarding failure to perform competently, return unearned fees and failure to communicate n four client matters; no prior discipline; two years' actual suspension.]

Although the breadth of misconduct in the instant matters has justified disbarment in other cases, many of those cases involved a respondent with a lengthy history of prior discipline, default and failure to accept responsibility for wrongdoing. The instant matters are distinguishable in that respondent has accepted responsibility, has no prior discipline in approximately 10 years of practice as of the commencement of misconduct, involves substantial mitigation relating to personal difficulties and respondent's agreement to accept lengthy suspension and repay all clients before attempting to resume practice. The instant matters evidence misconduct more serious than that in *Bledsoe*, but less than that necessarily demanding disbarment to protect the public, the courts and the legal profession.

**OTHER CONDITIONS NEGOTIATED BY THE PARTIES.**

Respondent stipulates and agrees that within **30 days** of the effective date of this stipulation, he will offer to arbitrate his claim for attorney's fees on the following matters: Cheatham (case number 09-O-11402, but no arbitration as to the filing fee amount of \$299, plus ten percent interest from December 18, 2008, which respondent will repay to client or to the CSF if CSF pays any or all of the amount owing); Ann Mahon (09-O-10021). Respondent further stipulates and agrees to abide by the terms and conditions of any such arbitration and to report to the Office of Probation ("OP") with proof that he has 1) written and mailed, by certified mail, the offers to arbitrate; 2) any former client response regarding the offers to arbitrate; 3) each client may choose whether the arbitration will be binding or non-binding; 4) respondent will abide by the client's choice regarding whether the arbitration will be binding or non-binding; 5) respondent will report to OP when any such arbitration(s) is/are scheduled and the results thereof; 6) respondent waives any objection to any payment that may be made pursuant to any arbitration decision pursuant to this condition by the Client Security Fund ("CSF"); and 7) to repay to the CSF any amounts paid out on his behalf related to any such arbitration, including interest and fees assessed by CSF. See table of restitution amounts below.

**FINANCIAL CONDITIONS, RESTITUTION.**

Within 30 days from the effective date of discipline in this matter, respondent must begin to make restitution payments to those former clients listed below, **in the order listed below**, or to the Client Security Fund ("CSF") if it has paid, in the principal amount as set forth in the chart below plus interest at the rate of 10% per annum as indicated in the chart below in monthly installments of \$200 until paid in full and furnish satisfactory evidence of such restitution to the Office of Probation. Respondent shall include, in each quarterly report required herein, satisfactory evidence of all restitution payments made by him or her during that reporting period. [If CSF has made payment(s), respondent agrees to make interest payments to the former clients in the order listed below, completely paying interest to one former client before making payment to the next former client as listed.]

Respondent agrees and acknowledges that he must include a cover letter with any payment(s) made to the former clients indicating the number of people he must repay pursuant to this Stipulation (at least 10; possibly more after arbitration) and that most of the former clients are likely to get no more than one payment per year given the amount of each monthly payment and the number of people to be repaid and that no stipulated discipline may constitute a requirement binding upon CSF that compels CSF to in fact pay on any given application. A copy of each letter accompanying payment must also be supplied to the Office of Probation along with evidence of any and all such payments.

CASE NAME/NO.	AMOUNT OF REFUND	10% INTEREST FROM
ROMO / 08-O-14362	\$5,565 + Interest	10/13/07 for \$5,000; 7/8/08 for \$565 (date of sanctions order)
SANCHEZ / 09-O-12467	\$4,400 + Interest	4/01/06
BAKER / 08-O-11604	\$1,000 + Interest	12/28/07
SINGLETON / 09-O-11002	\$1300 + Interest	9/26/08
CHEATHAM / 09-O-11402	\$299 + Interest; Arbitrate remainder (\$1201)	12/18/08 on \$299; interest on \$1201 to be determined by arbitrator
THUN / 09-O-15881	\$3,000 + Interest	8/21/09
COLBY / 09-O-18038	\$1,000 + Interest	10/11/09
LOPEZ / 09-O-17483	\$16,000 + Interest (Principal amount of \$16,000 paid at signing of stipulation)	4/4/08

SIMON / 10-O-02760	\$1500 + interest	7/16/08
WORKS / 10-O-05972	\$2,500 + Interest	12/15/ 2007
GAUDINIER / 09-O-11943	\$ 0 (Although respondent failed to perform, he did previously disgorge fees and paid client's filing fees pursuant to court order)	N/A
LOSURDO / 09-O-10954	\$ 0 (Although respondent initially failed to perform and to properly hold advanced costs in trust, he did ultimately pay the filing fees and file the petition.)	N/A
MAHON / 09-O-10021	Arbitrate \$17,912	As determined by arbitrator

**FINANCIAL CONDITIONS, RESTITUTION – CSF PAYMENT WAIVER.**

Respondent waives any objection to payment by the State Bar Client Security Fund ("CSF") upon a claim for the principal amount of restitution set forth herein. Respondent understands that CSF will charge and he is responsible for paying to CSF all fees and interest associated with CSF payment(s) made on claims against respondent.

**RESTRICTIONS WHILE ON ACTUAL SUSPENSION.**

During the period of actual suspension, respondent shall not:

Render legal consultation or advice to a client;

Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

Appear as a representative of a client at a deposition or other discovery matter;

Negotiate or transact any matter for or on behalf of a client with third parties;

Receive, disburse, or otherwise handle a client's funds; or

Engage in activities which constitute the practice of law.

Respondent shall declare under penalty of perjury that he or she has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods in which the respondent was actually suspended from the practice of law.

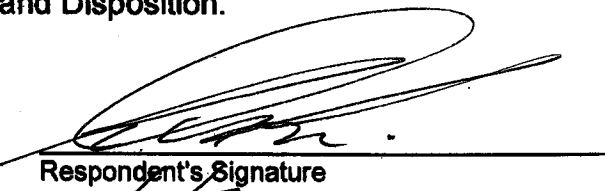




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In the Matter of <b>RICHARD A. LIMA</b>	Case number(s): 08-O-11604; 08-O-14362; 09-O-10534; 09-O-10954; 09-O-11002; 09-O-1140; 09-O-10021; 09-O-11943; 09-O-12467; 09-O-15881; 09-O-17483; 09-O-18038-LMA and UNFILED case numbers 10-O-02760; 10-O-05972
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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>7/19/10</u> Date	 Respondent's Signature	<u>Richard A. Lima</u> Print Name
<u>7/19/10</u> Date	 Respondent's Counsel Signature	<u>Henry D. Nunez</u> Print Name
<u>7/20/10</u> Date	 Deputy Trial Counsel's Signature	<u>Tammy M. Albertsen-Murray</u> Print Name

(Do not write above this line.)

In the Matter Of  
**RICHARD A. LIMA**

Case Number(s):  
**08-O-11604; 08-O-14362; 09-O-10534; 09-O-10954;  
09-O-11002; 09-O-1140; 09-O-10021; 09-O-11943; 09-  
O-12467; 09-O-15881; 09-O-17483; 09-O-18038-LMA  
and UNFILED case numbers 10-O-02760; 10-O-  
05972**

### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

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

August 10, 2010  
Date

Pat McElroy  
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 August 10, 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:

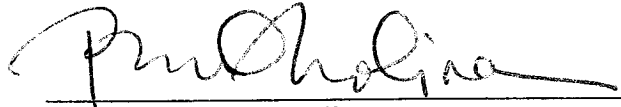
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**HENRY DORAME NUNEZ  
4478 W SPAATZ AVE  
FRESNO, CA 93722**

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

**TAMMY A. ALBERTSEN-MURRAY, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 10, 2010.



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Bernadette C.O. Molina  
Case Administrator  
State Bar Court