

State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004 Bar # 194283	Case Number(s): 08-O-12104; 09-O-13405 PUBLIC MATTER	For Court use only FILED NOV 10 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent David A. Clare Attorney At Law 444 West Ocean Blvd., Suite 800 Long Beach, CA 90802 (562) 624-2837 Bar # 44971	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: NICHOLAS C. ROWLEY Bar # 220036 A Member of the State Bar of California (Respondent)	STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 30, 2002.
- (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 **16** pages, not including the order.



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013, 2014. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☐ State Bar Court case # of prior case
 - (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 or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances

None.

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

- (1) ☒ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. See Stipulation Attachment, page 12, section "C", paragraph 1.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See Stipulation Attachment, page 12, section "C", paragraph 2.
- (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. See Stipulation Attachment, page 13, section "C", paragraph 3.

(Do not write above this line.)

- (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. See Stipulation Attachment, page 13, section "C", paragraph 4.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

None.

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☐ Respondent must be suspended from the practice of law for a period of two (2) years.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

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

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

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason: .

- (2) ☒ **Other Conditions:**

MCLE CREDIT: Respondent will not receive Minimum Continuing Legal Education (MCLE) credit for attending the State Bar Ethics School as required pursuant to paragraph E.(7) above. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending this course. (Rule 3201, Rules of Procedure of the State Bar of California.)

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: NICHOLAS C. ROWLEY

CASE NUMBER(S): 08-O-12104; 09-O-13405

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on June 8, 2011, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW.

NICHOLAS C. ROWLEY ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct.

Case No. 08-O-12104 (Complainant: Brendee & Charles Thomas)

Facts:

1. Respondent was admitted to the practice of law in the State of California on May 30, 2002, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. In December 2005, Brendee Thomas ("Brendee") met with Respondent's medical expert, Dr. Charles Ballard ("Ballard"), regarding her personal injury matter.

3. On February 24, 2006, after receiving Ballard's assessment, Brendee Thomas and her husband, Charles Thomas, employed Respondent to pursue medical malpractice and loss of consortium actions on their behalf.

4. On April 13, 2006, Respondent filed a civil action entitled *Brendee Thomas and Charles Thomas v. Lilia Pacini, M.D et al.*, Riverside Superior Court, case number INC058037 (the "Thomas action").

5. On June 12, 2006, the court in the Thomas action scheduled an Order to Show Cause ("OSC") for July 14, 2006 as to why unserved parties should not be dismissed. Respondent's office received notice of the July 14, 2006 OSC, but Respondent was not personally aware of the

notice. Respondent's role in the Thomas action was to be the trial attorney. All pre-trial litigation and discovery was to be handled by Respondent's law partner and/or associate attorneys. Nevertheless, Respondent was the lead attorney in the Thomas action and was ultimately responsible for the handling of the case.

6. On July 14, 2006, the court held the OSC regarding dismissal of the Thomas action. Neither Respondent nor anyone from his office appeared in court on behalf of the Thomases.

7. Thereafter, the Thomas action was dismissed due to Respondent's failure to timely file proof of service on all defendants with the court. Respondent had served all defendants on July 10, 2006, but the proofs of service were not filed with the court until July 18, 2006, after the Thomas action had already been dismissed.

8. When Respondent was informed of the dismissal of the Thomas action by his office he contacted the opposing counsel for defendants and arranged for their agreement to a stipulation to set-aside the dismissal.

9. On August 4, 2006, Brendee emailed Respondent regarding the dismissal. On August 4, 2006, Respondent responded to Brendee by email saying he would have the dismissal set aside.

10. On September 5, 2006, Respondent filed a motion to set aside the dismissal in the Thomas action. The hearing on the motion was scheduled for September 18, 2006. On September 18, 2006, the court granted the motion to set aside the dismissal in the Thomas action.

11. In January 2007, Larry E. White ("White"), an opposing counsel in the Thomas action, scheduled the depositions of the Thomases. On January 29, 2007, Respondent's office informed the Thomases by letter that their depositions were set for February 12, 2007.

12. On February 12, 2007, the Thomases and White appeared at Respondent's office for their depositions. But Respondent was not present and the deposition had been cancelled without notice to the Thomases or to White. Respondent's receptionist explained to White that the deposition was off calendar because of the sudden departure of Respondent's law partner from the firm. It was this law partner that was assigned to defend the Thomases at their deposition.

13. On May 9, 2007, White contacted Respondent by letter regarding the supplemental discovery responses to the discovery defendant's served in February 2007. Respondent's office received White's letter.

14. On May 14, 2007, Respondent's office provided opposing counsel with supplemental responses to discovery.

15. On November 14, 2007, Respondent's office informed the Thomases by letter that their depositions were re-scheduled for December 7, 2007.

16. On November 19, 2007, the court set trial in the Thomas action for July 7, 2008, but the court also stated that the trial would trail for two weeks.

17. On December 7, 2007, White and the Thomases appeared for the depositions of the Thomases. Respondent did not appear but his office arranged for a contract attorney to defend the Thomases at the deposition.

18. At the December 7, 2007 deposition, Respondent's contract attorney was not prepared to respond to any of the defendant's several requests for documents that were part of the deposition notice. Further, since Respondent could not be reached, the deposition did not go forward and had to be rescheduled.

19. On January 4, 2008, Respondent wrote Brendee informing her that he was going to withdraw as counsel. Attached to his letter was a copy of Brendee's file and a substitution of attorney form. Respondent believed at this time that he had an irreconcilable difference with the Thomases about their case and decided he would not continue representing them in the Thomas action.

20. Brendee received Respondent's January 4, 2008 letter, but refused to return a signed substitution of attorney to Respondent.

21. In February 2008, Respondent determined that he would have to file a motion to be relieved as counsel. Respondent instructed the non-attorney paralegal and office manager ("Office Manager") under the supervision of his law partner, to prepare the motion to be relieved as counsel.

22. On February 19, 2008, Respondent filed his motion to be relieved as counsel of record in the Thomas action. At the time Respondent filed the motion to be relieved as counsel, no one in his office had propounded any written or other type of discovery in the Thomas action.

23. On March 17, 2008, the Thomases filed opposition to Respondent's motion to be relieved as counsel arguing that if Respondent was permitted to withdraw they would not be able to find another attorney this late in the case. The Thomases opposition also stated that Respondent had failed to conduct discovery on their behalf, was difficult to contact and was essentially attempting to dump their case.

24. Respondent's office received the opposition filed by the Thomases. Respondent, who was in Iowa at this time, was contacted and informed by his office staff of what was stated by the Thomases in their opposition.

25. Respondent became very upset at what he believed were unfair accusations and determined to file a reply to the Thomases opposition. Respondent dictated a declaration to the Office Manager who was to then prepare a draft for Respondent's review. Respondent also instructed that the declaration was to be filed under seal.

26. On March 27, 2008, despite Respondent's instructions, the Office Manager filed the draft declaration Respondent had dictated to her as Respondent's Reply to the Thomases' opposition to the motion to be relieved as counsel. The Office Manager signed the declaration on behalf of Respondent and filed it with the court in the Thomas action and served it on opposing counsel. The Office Manager did not file the reply under seal as instructed by Respondent.

27. In the Reply, Respondent made the following statements:

"There are facts that I have learned within the purview of the attorney client privilege that lead me to believe that Plaintiff Thomas's case is frivolous. I do not believe Plaintiff Thomas is a likeable or credible witness and therefore I seriously doubt that a jury would end up giving her any compensation after a trial. Furthermore, at this point, I despise the woman based on her misrepresentations and I hereby represent to her and to this court that if I am FORCED to represent her that I will not be able to put my heart into it. I believe I have done the diligent thing by informing Plaintiff four months ago that I would not be able to represent her any further. NOW, she expects me to continue to work and to do it for free (because that is what it will be if she loses this case which I anticipate being the case.) ..."

"[P]laintiff's opposition is absolutely untrue except that I am prejudiced against her. I despise her and would rather shovel manure than represent her at trial...."

28. On April 23, 2008, the court in the Thomas action granted Respondent's motion to be relieved as counsel.

Conclusions of law:

29. By failing to supervise the Office Manager and ensure that his Reply to the Thomases' opposition to his motion to be relieved as counsel was filed under seal so that Respondent would not assume a position prejudicial and antagonistic to his client without the precaution of an in camera proceedings or other proceedings that protected the interests of his clients, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

30. By failing to take necessary corrective action in the Thomas action when it became clear that his reliance upon his law partners to perform competently was no longer reasonable because his law partners had: 1) permitted the Thomas action to be dismissed on July 14, 2006; 2) failed to propound discovery on behalf of the Thomases in the Thomas action; 3) failed to appear on behalf of the Thomases at the February 12, 2007 deposition; 4) did not serve responses to the defendant's February 2007 discovery responses until May 14, 2007; and 5) appeared at the December 7, 2007 deposition unprepared to respond to the defendant's request for production of documents, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 09-O-13405 (State Bar Investigation)

Facts:

31. At all times relevant herein, Respondent maintained a Wells Fargo General Business Account designated account no. xxx- xxxxx940 ("non-trust account").

32. At all times relevant herein, Respondent maintained a Wells Fargo IOLTA Account designated account no. xxx- xxxxx265 ("trust account").

33. In November 2007, Respondent and his wife lost their new-born child who died shortly after birth. This was a devastating experience for Respondent and his family. Starting in November 2007, Respondent spent virtually all of his time in Iowa to be with his family during the aftermath of this tragedy and left the operation of this California law office in the hands of his law partners and the Office Manager.

34. In November 2007, Respondent was relying on his law partners to handle all pre-litigation matters and discovery in all of his cases. Respondent's law partners were also to assume responsibility for the accounting of client settlements, including deposits and disbursements into and out of Respondent's bank accounts.

35. Beginning in November 2007, a series of insurance settlements were achieved for Respondent's clients. These were not cases that were filed in court, but involved matters that were all pre-litigation. Consequently, Respondent was not be directly involved in the settlement of any of these cases, but was relying on his law partner to supervise the settlement process.

36. Once the settlements were achieved Respondent left it up to the Office Manager to finalize the accounting of client settlements. The Office Manager was to perform the deposits of settlement funds and disbursements to all clients. At this time, the Office Manager was a signatory on Respondent's non-trust account.

37. On November 8, 2007, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$7,500 received on behalf of his client Miguel Trigueros.

38. On November 8, 2007, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$7,000 received on behalf of his client Samuel Asencio.

39. On November 11, 2007, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$7,000 received on behalf of his client Enrique Rivera.

40. On January 16, 2008, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$11,000 received on behalf of his clients Margarita Mejia and Alfonso Mejia.

41. On January 16, 2008, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$6,500 received on behalf of his client Anthony Cornell.

42. On January 21, 2008, non-trust account check number 1070 was made payable to the Office Manager in the amount of \$1,271.87. This check was issued by the Office Manager for what she believed was her year-end bonus. Respondent did not authorize the issuance of check number 1070, nor was he even aware that the Office Manager had written herself this check until several months later.

43. On January 28, 2008, non-trust account check number 1076 was made payable to the Office Manager in the amount of \$3,516. This check was issued by the Office Manager for what she believed was her year-end bonus. Respondent did not authorize the issuance of check number 1076, nor was he even aware that the Office Manager had written herself this check until several months later.

44. On February 26, 2008, the Office Manager deposited into Respondent's non-trust account, a settlement check for \$3,000 received on behalf of his client Dana Bradarich.

Conclusions of law:

45. By failing to supervise the Office Manager, who repeatedly deposited settlement checks received on behalf of clients into Respondent's non-trust account, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

46. By failing to supervise the Office Manager, who issued check numbers 1070 and 1076, made payable to herself from Respondent's non-trust account, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

C. FACTS SUPPORTING MITIGATION.

1. Respondent has no prior record of discipline. However, the weight of this factor is diminished by the fact that Respondent had been admitted only for five years at the time the misconduct herein occurred.¹

2. Respondent has exhibited candor and significant cooperation with the State Bar of California.² During the pendency of this matter, Respondent cooperated with the State Bar, informally providing information that assisted the State Bar in its understanding of Respondent's misconduct herein. Finally, Respondent also cooperated in that he has stipulated to facts, conclusions of law and level of discipline.

¹ Standard 1.2(e)(i).

² Standard 1.2(e)(v).

3. At the time of his misconduct, Respondent suffered extreme personal difficulties in his personal life related to his family. In November 2007, Respondent and his wife lost their new-born child who died shortly after birth. This was a devastating experience for Respondent and his family which took place during the same general time period as the misconduct herein.

4. Respondent's good character has been attested to by attorneys and non-attorney members of the general community who are aware of the full extent of Respondent's misconduct.³ In addition, Respondent has provided pro bono legal services to numerous clients. Finally, Respondent served honorably in the United States Armed Forces for three years (with three additional years in the reserves) and is a decorated combat medic

D. AUTHORITIES SUPPORTING DISCIPLINE.

Applicable Standards:

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

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, the sanction imposed shall be the more or most severe of the different applicable sanctions. Standard 1.6(b) provides that a greater or lesser degree of discipline than the appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

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

Aggravating & Mitigating Circumstances:

Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. In this case there are no aggravating circumstances.

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the standards where mitigating circumstances exist. As discussed above, there are three mitigating circumstances in this matter. First, Respondent has no prior record of discipline. Second, Respondent has exhibited candor and significant cooperation with the State Bar of California. Third, Respondent's good character has been attested to attorneys and non-attorney members of the general community who are aware of the full extent of Respondent's misconduct.

³ Standard 1.2(e)(vi).

Caselaw:

In *Matter of Aguiluz*,⁴ the Review Department reviewed the discipline for an attorney with no prior record who had been found culpable of abandoning a single client and observed that in those matters the discipline ranged from no actual suspension to 90 days actual suspension. In *Aguiluz*, the court recommended respondent be suspended from the practice of law for one year, with execution of the suspension stayed, and that he be placed on probation for two years, subject to various terms and conditions.

E. PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A. (7) was October 21, 2011.

F. 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>
08-O-12104	One	3-110(A)
09-O-13405	Four	4-100(A)
09-O-13405	Six	B&P 6106
09-O-13405	Seven	1-320(A)

G. COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of October 21, 2011, the prosecution costs in this matter are \$6,185.40. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

⁴ (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 45-46.

In the Matter of:
NICHOLAS C. ROWLEY

Case Number(s):
08-O-12104; 09-O-13405

Law Office Management Conditions

- a. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within days/ months/one (1) years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six (6) hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

STATE BAR CLIENT TRUST ACCOUNTING SCHOOL: Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the State Bar Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session. In addition, Respondent will not receive Minimum Continuing Legal Education (MCLE) credit for attending the State Bar Client Trust Accounting School as required in this condition. Th requirement in this condition is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending this course. (Rule 3201, Rules of Procedure of the State Bar of California.)

(Do not write above this line.)

In the Matter of:
NICHOLAS C. ROWLEY

Case number(s):
08-O-12104; 09-O-13405

SIGNATURE OF THE PARTIES

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

Date

10-28-2011

Respondent's Signature

Nicholas C. Rowley

Print Name

Date

10/31/2011

Respondent's Counsel Signature

David A. Clare

Print Name

Date

11/1/2011

Deputy Trial Counsel's Signature

Ashod Mooradian

Print Name

(Do not write above this line.)

In the Matter of:
NICHOLAS C. ROWLEY

Case Number(s):
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STAYED SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date/ (See rule 9.18(a), California Rules of Court.)**

11-9-11
Date


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 10, 2011, I deposited a true copy of the following document(s):

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

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

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

DAVID ALAN CLARE
DAVID A CLARE, ATTORNEY AT LAW
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

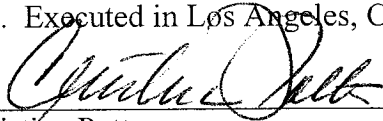
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Ashod Mooradian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 10, 2011.


Cristina Potter
Case Administrator
State Bar Court