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**State Bar Court of California
Hearing Department
Los Angeles**

<p>Counsel For The State Bar</p> <p>Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004</p> <p>Bar # 194283</p>	<p>Case Number (s) 08-O-12444-RAP</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>SEP 15 2009</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Sandra J. Garcia, Esq. LEAL TREJO LLP 707 Wilshire Blvd., Suite 3700 Los Angeles, CA 90017-3519</p> <p>Bar # 187135</p>		
<p>In the Matter Of: CHARLES D. TREJO</p> <p>Bar # 187529</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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 **January 28, 1997**.
- (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 **19** 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: **Three (3) billing cycles following the effective date of the Supreme Court order.**
(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. **Respondent pleads nolo contendere to the following aggravation. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the following stipulated aggravation: Respondent, on several key occasions, made false statements to his client regarding the status and progress of the suit. The wilful and/or intentional making of false statements, together with Respondent's wilful and/or intentional failure to respond to reasonable status inquiries from his client concealed the truth to his client's detriment.**
- (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. **Respondent pleads nolo contendere to the following aggravation. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the following stipulated aggravation: Respondent's misconduct was the cause of the dismissal of his client's suit. Further, the client was harmed because Respondent made false statements regarding the status of the case which misled and deprived the client of the time he would have otherwise had to move to set aside the dismissal. In addition, the failure of Respondent to appear when ordered by the court, to respond to motions properly served upon him or respond to a tentative ruling from**

the court and in each circumstance thereby occasioning the waste of judicial time and resources was a significant harm to the administration of justice

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **Respondent pleads nolo contendere to the following aggravation. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the following stipulated aggravation: In this matter Respondent's misconduct included not only a failure to perform, but also a failure to obey court orders and moral turpitude. Respondent's misconduct herein goes to the heart of what an attorney represents in our society. Compounding the harm he caused the public and the administration of justice is the Respondent's lack of effort to rectify the harm occasioned by him, or at a minimum, to seek to atone for the consequences of his misconduct. Respondent made no effort to reinstate the Dugas lawsuit or at a minimum inform Dugas of the case status and allowed Dugas the opportunity to find replacement counsel.**
- (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. **Respondent pleads nolo contendere to the following aggravation. Respondent completely understands that the plea for nolo contendere shall be considered the same as an admission of the following stipulated aggravation: In this matter, Respondent's misconduct includes a failure to perform, failure to inform his client of significant developments, failure to obey court orders and moral turpitude.**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline.**
- (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. **Respondent and his wife have approximately \$80,000.00 in tax liens for back taxes.**
- (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. **Due to stress from tax liens and other economic losses, Respondent and his wife experienced a breakdown of the marital relationship. Presently, Respondent and his wife have accepted their financial collapse and are working together to address and resolve their problems together as a married couple.**
- (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. **Respondent has provided the State Bar with "good character" declarations from three attorneys who all state that they are aware of the charges and facts alleged in the NDC, have known Respondent for a significant time, have worked professionally with Respondent and believe that Respondent will not commit misconduct in the future.**
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

None.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **Two(2) years**.
- I. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **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)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **Forty-Five (45) Days**.

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

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (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 checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:**

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.(8) above. This requirement is separate from any MCLE requirement (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: CHARLES D. TREJO

CASE NUMBER(S): 08-O-12444-RAP

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 September 29, 2008, 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.

CHARLES D. TREJO (“Respondent”) pleads *nolo contendere* to the following facts and violations. Respondent completely understands that the plea for *nolo contendere* shall be considered the same as an admission of the stipulated facts and of his culpability of the statutes and/or *Rules of Professional Conduct* specified herein.

Facts:

1. On October 24, 2006, Adrian Dugas (“Dugas”) employed Respondent to dissolve a business partnership between Dugas and Dugas’s brother. Dugas paid Respondent \$3,000 in advanced legal fees.
2. On December 13, 2006, Respondent filed a lawsuit on behalf of Dugas in Los Angeles County Superior Court (“Court”) case no. VC047832, entitled *Adrian Dugas v. Roque Dugas et al.* (“the Dugas lawsuit”). On January 25, 2007, in response to the Dugas lawsuit defense counsel filed a demurrer.
3. On February 26, 2007, the Court sustained the defendant’s demurrer, but granted Dugas leave to amend the complaint within 20 days. Later that same day, Respondent filed the First Amended Complaint in the Dugas lawsuit. However, the First Amended Complaint did not cure the deficiencies of the original complaint.
4. Consequently, on April 9, 2007, defense counsel filed a demurrer to the First Amended Complaint. Respondent, however, did not file an opposition to the defendant’s demurrer. In addition, on April 9, 2007, defense counsel mailed a “meet and confer” letter to Respondent regarding Dugas’ outstanding discovery responses. Respondent received the letter but did not respond to it.

5. On April 30, 2007, the defendant filed his motion to compel discovery responses from Dugas. Once again, Respondent received a copy of the defendant's motion to compel but did not prepare or file an opposition to the motion.

6. On May 16, 2007, the Court sustained the demurrer with leave to amend the First Amended Complaint within ten days. Respondent received the Court's ruling on the demurrer but failed to amend the First Amended Complaint.

7. On May 29, 2007, Dugas sent an email to Respondent asking for an update on the Dugas lawsuit. Respondent received the email but did not inform Dugas of any problems or issues in the Dugas lawsuit.

8. On May 30, 2007, the Court granted defendant's motion to compel, ordering Dugas to respond further by June 20, 2007. The Court further ordered Dugas and Respondent to pay \$540 in sanctions by June 20, 2007. Respondent received the Court's order but did not pay the sanctions or notify Dugas of the sanctions. Respondent knew he was required to pay these sanctions.

9. On June 12, 2008, defense counsel filed a Motion to Strike Portions of Plaintiff's First Amended Complaint. Respondent received a copy of the motion but did not prepare or file an opposition to it. On July 6, 2007, the Court granted defendant's motion to strike the third, fourth and fifth causes of action from the first amended complaint without leave to amend. Respondent received the Court's order.

10. On July 18, 2007, defense counsel mailed and faxed Respondent another "meet and confer" letter. In that letter, defense counsel advised Respondent that he would move for terminating sanctions if Respondent did not provide discovery responses and pay the court-ordered \$540 sanctions by July 23, 2007. Respondent received said letter but did not respond to it and did not pay the \$540 sanctions.

11. On August 13, 2007, the defendant filed a motion for terminating sanctions in the Dugas lawsuit. Respondent received a copy of the motion but did not prepare or file an opposition to it.

12. On August 29, 2007, Dugas sent an email to Respondent and attached a letter, from Dugas to Roque Dugas, for Respondent to review. Respondent received said email and letter but did not inform Dugas of any problems or issues in the Dugas lawsuit.

13. On September 6, 2007 the Court issued a tentative ruling on the motion for terminating sanctions and notice of hearing date on September 7, 2007. The Court faxed a copy of the tentative ruling to both counsels, which notified them of the Court's intent to grant terminating sanctions and dismiss the Dugas lawsuit. The Court further instructed the parties to appear for hearing on September 7, 2008, if either party did not agree to submit on the tentative ruling. Respondent received a copy of the tentative ruling and notice of hearing.

14. On September 7, 2008, Respondent failed to appear for hearing on the motion for terminating sanctions or otherwise contact the Court or defense counsel. Then, on September 20, 2007, the Court filed an order granting terminating sanctions and dismissing the Dugas lawsuit. Respondent received a copy of the Court's order. At no time did Respondent inform Dugas that the Court had dismissed the Dugas lawsuit or take action to reinstate the Dugas lawsuit.

15. On December 11, 2007, Dugas sent an email to Respondent asking for an update on the Dugas lawsuit. Also, in January and February 2008, Dugas telephoned Respondent's office numerous times to inquire about the Dugas lawsuit. Each time, Respondent's secretary told Dugas that Respondent was busy.

16. On February 15, 2008, Respondent sent an email to Dugas stating, in part, that no imminent court dates were scheduled and that Respondent was in the process of moving the Dugas lawsuit to Central District Court. At the time he made these statements, Respondent knew they were false and/or misleading. In addition, in this February 15, 2008 email, Respondent stated that Dugas owed legal fees.

17. That same day, Dugas responded by sending an email to Respondent stating that Dugas had not received a bill for services. In his email, Dugas also asked Respondent whether the Dugas lawsuit was still active and whether Respondent was going to finish the matter. At no time did Respondent respond to Dugas' February 15th email or otherwise communicate further with Dugas.

18. In March 2008, Dugas learned from opposing counsel that the Dugas lawsuit had been dismissed. At no time did Respondent inform Dugas of the demurrers, motion to compel, motion to strike or resulting court orders, ultimately resulting in dismissal. Respondent concealed from Dugas the problems in the Dugas lawsuit and misled Dugas about the true status of the case.

19. After initially defaulting¹, on March 24, 2009, Respondent, through his counsel of record SANDRA J. GARCIA, of Leal Trejo LLP, filed and served his *Response to the Notice of Disciplinary Charges* entering a plea of *nolo contendere* thereby admitting the truth of the facts alleged in the Notice of Disciplinary Charges and of culpability for the purposes of the disciplinary proceedings.

Conclusions of Law:

20. By not amending the First Amended Complaint or opposing the demurrer to the First Amended Complaint, by not responding to defense counsel's meet and confer letter, by not opposing the motion to compel or otherwise addressing discovery issues, by not opposing the motion to strike portions of the First Amended Complaint, by not opposing the motion for terminating sanctions or otherwise appearing for hearing on the motion, Respondent

¹ Respondent's default was entered and he was enrolled inactive on December 8, 2008. Thereafter, on February 10, 2009, Respondent filed a Motion to Set Aside Default which was granted by the Court on March 4, 2009. Respondent was also returned to active status on March 4, 2009.

intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of *Rules of Professional Conduct*, rule 3-110(A).

21. By not informing Dugas about the aforementioned demurrers, motion to compel, motion to strike, motion for terminating sanctions and resulting court orders – including the order for sanctions against Dugas, Respondent failed to keep a client reasonably informed 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).

22. By not paying sanctions as ordered by the Court, Respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in willful violation of *Business and Professions Code*, section 6103.

23. By making false and/or misleading statements and otherwise misleading Dugas regarding the status of the Dugas lawsuit, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of *Business and Professions Code*, section 6106.

C. AUTHORITIES SUPPORTING DISCIPLINE.

Applicable Standards²:

The determination of discipline begins “by looking to the purpose of sanctions for attorney misconduct.”³ “The primary purposes of disciplinary proceedings...are the protection of the public, the courts[,] and the legal profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession.”⁴

The standards provide guidance and deserve “great weight.”⁵ “[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct.”⁶ The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has “grave doubts” about the recommendation's propriety.⁷

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.

² *Standards for Attorney Sanctions for Professional Misconduct*. Hereinafter “Standard” or “Standards”.

³ *In re Morse* (1995) 11 Cal.4th 184, 205.

⁴ Standard 1.3.

⁵ *In re Silvertown* (2005) 36 Ca.4th 81, 92; *In re Morse*, supra, 11 Cal.4th at p. 205; *In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.

⁶ *In re Naney*, supra, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.

⁷ *In re Morse*, supra, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.

Standard 2.3 provides actual suspension or disbarment for an act of moral turpitude, depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

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

Standard 2.6(a) provides that culpability of a member for "...violation of any of the following provisions of the *Business and Professions Code* shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

- (a) Sections 6067 and 6068;
- (b) Sections 6103 through 6105..."

Aggravating Circumstances:

Respondent pleads *nolo contendere* to the following aggravation. Respondent completely understands that the plea for *nolo contendere* shall be considered the same as an admission of the stipulated aggravation specified herein.

An aggravating circumstance "...is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession."⁸ Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. In this matter, the following four circumstances should be considered aggravating.

First, Respondent's misconduct evidences multiple acts of wrongdoing.⁹ In this matter, Respondent's misconduct includes a failure to perform, failure to inform his client of significant developments, failure to obey court orders and moral turpitude.

Second, 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*..."¹⁰ Respondent consistently, on several key occasions, made false statements to Dugas regarding the status and progress of the Dugas lawsuit. The wilful and/or intentional making of false statements, together with Respondent's wilful and/or intentional failure to respond to reasonable status inquiries from Dugas concealed the truth to Dugas' detriment.

⁸ Standard 1.2(b).

⁹ Standard 1.2(b)(ii)

¹⁰ Standard 1.2(b)(iii).

Third, Respondent's misconduct significantly harmed the client Dugas and the administration of justice.¹¹ Not only was Dugas' lawsuit dismissed, but also because Respondent's false statements regarding the status of the case misled and deprived Dugas of the time he would have otherwise had to move to set aside the dismissal. In addition, the failure of Respondent to appear when ordered by the court, to respond to motions properly served upon him or respond to a tentative ruling from the court and in each circumstance thereby occasioning the waste of judicial time and resources was a significant harm to the administration of justice.

Respondent's misconduct demonstrated a lack of respect for the authority of the court by an officer of the court resulting in harm to the public's respect for the legal profession. An attorney plays a public and well-known role in the administration of justice and as an officer of the court. In this role, an attorney is seen by the public as an advocate for justice and legal rights as well as a check and balance ensuring that court proceedings are fair, permitting the introduction of all admissible evidence and/or presentation of all relevant legal analysis/arguments sought by the involved parties. An attorney's failure to appear and participate, or at a minimum, obey orders of a court is seen by the public as a breakdown of the administration of justice at its most fundamental level and in this particular case had the effect of causing the dismissal of the Dugas lawsuit.

Finally, indifference toward rectification of, or atonement for, the consequences of misconduct is an aggravating circumstance.¹² As discussed above, in this matter Respondent's misconduct included not only a failure to perform, but also a failure to obey court orders and moral turpitude. Respondent's misconduct herein goes to the heart of what an attorney represents in our society. Compounding the harm he caused the public and the administration of justice is the Respondent's lack of effort to rectify the harm occasioned by him, or at a minimum, to seek to atone for the consequences of his misconduct. Respondent made no effort to reinstate the Dugas lawsuit or at a minimum inform Dugas of the case status and allowed Dugas the opportunity to find replacement counsel. Respondent's indifference and failure to atone in this matter is a defect of character which is generally understood by this Court as an indication that rehabilitation has not even begun. In a profession such as law, where the likelihood any given attorney will commit misconduct is directly related to the existence or non-existence of their good moral character, the Respondent's indifference cannot be countenanced and his failure to atone is unacceptable. Respondent's initial failure to participate in these proceedings also evidences continuing indifference.

Although Respondent's action to hire counsel and successfully seeking the setting aside of the default in this matter show some awareness on his part of the seriousness of the State Bar's charges, Respondent's failure to timely participate and appear again occasioned the waste of State Bar Court and prosecutorial resources as was the case in the underlying matter. Therefore, the Respondent is only entitled to very little credit for actions after the entry of default. To do otherwise would amount to rewarding Respondent for his continuing misconduct.

Mitigating Circumstances:

¹¹ Standard 1.2(b)(iv).

¹² Standard 1.2(b)(v).

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the standards where mitigating circumstances exist. In this case, there are two mitigating circumstances. First, pursuant to Standard 1.2(e)(v), Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline. Second, pursuant to Standard 1.2(e)(vi), Respondent has made a demonstration of good character of the member attested to by a wide range of references in the legal community and who are aware of the full extent of the member's misconduct. Respondent has provided the State Bar with "good character" declarations from three¹³ attorneys. All three attorneys state in their declarations that they are aware of the charges and facts alleged in the NDC, have known Respondent for a significant time, have worked professionally with Respondent and do not believe that Respondent would ever engage in misconduct again. In addition, at the time of the misconduct, Respondent suffered from severe financial stress which resulted from the imposition of approximately \$80,000.00 in tax liens, for back taxes. Also, at the time of the misconduct, Respondent suffered extreme difficulties in his marriage which almost result in a divorce. Both of these circumstances were beyond Respondent's control and were directly responsible for the misconduct. However, presently Respondent and his wife has reconciled, accepted responsibility for their financial problems and are working together to resolve them as a married couple.

Given the nature and scope of Respondent's misconduct, and considering evidence of aggravating and mitigating circumstances, the appropriate level of discipline under the *Standards* is a period of actual suspension of 45 days "to deter the recalcitrant attorney from future wrongdoing."¹⁴

Caselaw:

In fashioning the appropriate level of discipline, the *Standards* are the starting point. Consideration must also be given to whether the recommended discipline is consistent with or disproportional to prior decisions of the California Supreme Court and the Review Department of the State Bar Court.

In *Matter of Aulakh*,¹⁵ the Review Department upheld the Hearing Department judge's decision to suspend a respondent from the practice of law for one year, stay the execution of the suspension, and place the respondent on probation for three years on terms and conditions including the payment of restitution and 45 days of actual suspension. In *Aulakh*, the respondent failed to perform legal services competently in a single client matter, improperly withdrew from employment while his client was incarcerated, failed to return unearned fees, and failed to render an accounting to the client.

¹³ One of the three "good character" declarations is from Respondent counsel in this matter, Sandra J. Garcia. Normally, such a declaration would be suspect. However, because Ms. Garcia's knowledge and experience with Respondent pre-dates this matter by several years and because Ms. Garcia does not routinely practice law before the State Bar Court, it is appropriate to consider and give the same weight to her declaration as the other attorneys' declarations.

¹⁴ *In Re Silvertown* (2005) 36 Cal. 4th 81, 95.

¹⁵ (1997) 3 Cal. State Bar Ct. Rptr. 690.

In *Wren v. State Bar*¹⁶, an attorney was suspended for two years, stayed, with two years of probation and 45 days actual suspension. The attorney, who had been in practice for 22 years, had no prior record of discipline. He represented a client in a dispute over a mobile home. He was supposed to file suit for repossession. Over a twenty two month period, the attorney had two meetings with the client, misrepresented the status of the case to the client leading the client to believe suit had been filed when it had not, and did nothing to prepare the case. The attorney blamed the client for vacillating on the decision to go to trial. The Court concluded the attorney failed to adequately communicate with his client, misrepresented the status of the matter to his client, failed to prosecute his client's claim and submitted misleading testimony to the hearing panel.

Comparison:

Respondent's misconduct significantly harmed his client because his failure to appear as ordered on one occasion and failure to respond to the defendant's several motions caused the dismissal of the case. Further, Respondent's misconduct in this matter, as discussed above, is aggravated by four factors: a) multiple acts of wrongdoing; b) misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations; c) harm to the client, the public, the courts and the administration of justice; and d) indifference toward rectification of, or atonement for, the consequences of misconduct. However, as discussed above, there are two factors in mitigation. First, Respondent cooperated with the State Bar to the extent that he stipulated to facts, conclusions of law and level of discipline. Second, Respondent's good character has been attested to by three attorneys who have known Respondent for a lengthy period of time and are fully aware of extent of the charges in this matter and do not believe that Respondent would ever engage in misconduct again.

Therefore, Respondent's actual suspension from the practice of law for 45 days is a level of discipline consistent with the applicable standards and caselaw.

D. PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A. (7) was August 12, 2009.

E. COSTS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of August 12, 2009, the estimated prosecution costs in this matter are approximately \$3,689.10. 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.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in

¹⁶ (1983) 34 Cal.3d 81.

Business and Professions Code, section 6140.7 and as a money judgment unless relief has been granted under rule 286 of the Rules of Procedure of the State Bar of California.

In the Matter of
CHARLES D. TREJO

Case number(s):
08-O-12444-RAP

A Member of the State Bar

Financial Conditions

a. Restitution

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

Payee	Principal Amount	Interest Accrues From
Adrian Dugas	\$2000.00	04/10/2008
Thomas A. Collins, Esq.	\$540.00	06/20/2007

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **one(1) year after the effective date of the Supreme Court's Order of Discipline in this matter.**

b. Installment Restitution Payments

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

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

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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

d. Client Trust Accounting School

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

In the Matter of
CHARLES D. TREJO

Case number(s):
08-O-12444-RAP

A Member of the State Bar

Law Office Management Conditions

- a. Within **90** 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.)


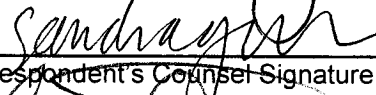
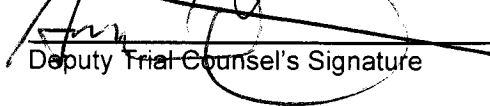
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for **two (2)** year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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In the Matter of CHARLES D. TREJO	Case number(s): 08-O-12444-RAP
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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>8/17/09</u> Date	 Respondent's Signature	<u>Charles D. Trejo</u> Print Name
<u>8-17-09</u> Date	 Respondent's Counsel Signature	<u>Sandra J. Garcia</u> Print Name
<u>8/19/09</u> Date	 Deputy Trial Counsel's Signature	<u>Ashod Mooradian</u> Print Name

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In the Matter Of CHARLES D. TREJO	Case Number(s): 08-O-12444-RAP
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ORDER

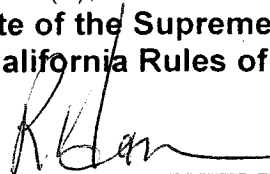
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

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.)**

9-9-09

Date



Judge of the State Bar Court

RICHARD A. HONN

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 Los Angeles, on September 15, 2009, 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:

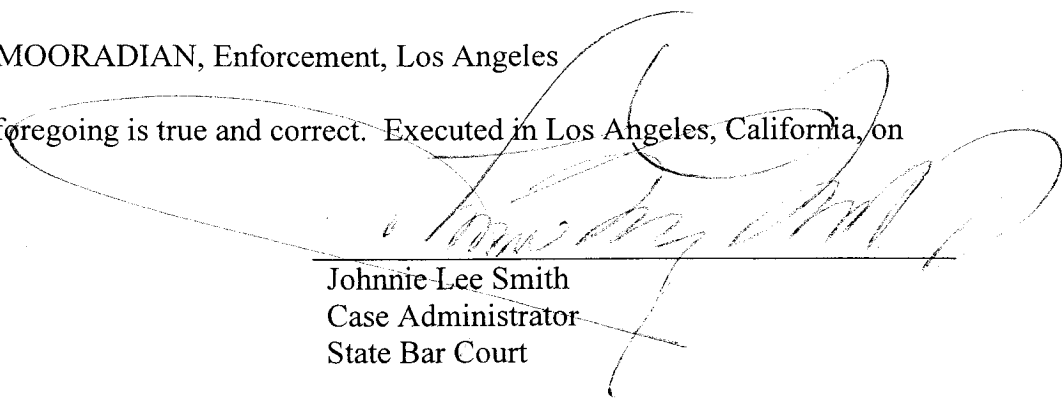
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SANDRA J. GARCIA
707 WILSHIRE BLVD STE 3700
LOS ANGELES, CA 90017

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

ASHOD MOORADIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 15, 2009.



Johnnie Lee Smith
Case Administrator
State Bar Court