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State Bar Court of California Hearing Department Los Angeles		kwiktag® 035 130 306 
Counsel For The State Bar Brandon K. Tady Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 83045	Case Number (s) 09-J-13136, 09-C-14290, 09-C-14291, 09-C-14293	(for Court's use) <p style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</p> <p style="text-align: center; font-size: 1.5em;">FILED </p> <p style="text-align: center;">FEB 08 2010</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
Counsel For Respondent Michael Wine 301 N. Lake Avenue, Ste. 800 Pasadena, California 91101-5113 Bar # 58657	Submitted to: Assigned Judge	
In the Matter Of: Gary L. Marsh Bar # 96825 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING 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 January 7, 1981.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 18 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 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 in this matter. (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 95-C-14404
 - (b) Date prior discipline effective November 28, 1996
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 3-110, California Business and Professions Code, sections 6101, 6102.
 - (d) Degree of prior discipline 30 days actual suspension, two years suspension stayed, two years probation.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment Re: Stipulation of Facts.
- (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.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Attachment Re: Stipulation of Facts.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See Attachment Re: Stipulation of Facts.
- (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. See Attachment Re: Stipulation of Facts.
- (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. See Attachment Re: Stipulation of Facts.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. See Attachment Re: Stipulation of Facts
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of 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 six (6) months.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in 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

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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 checked="" 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:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Gary L. Marsh

CASE NUMBER(S): ET AL. 09-J-13136, 09-C-14290, 09-C-14291, 09-C-14293

STATEMENT OF STIPULATED FACTS.

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.

1. State Bar Court Case number 09-J-13136.

State Bar Court case number 09-J-13136 is based on a State Bar of Colorado disciplinary proceeding captioned "People of the State of Colorado vs. Gary Marsh," case number 06 PDJ 013 ("Colorado Disciplinary Proceeding"). The Colorado Disciplinary Proceeding was resolved by Stipulation filed on March 1, 2006. In the Stipulation, Respondent Gary L. Marsh stipulated to three years actual suspension, the requirement of a reinstatement hearing, and reimbursement to the complaining witnesses or the Colorado client protection fund in the amount of \$21,000 as a prior condition of reinstatement. Respondent stipulated to misconduct including negligent conversion of client funds, failures to place retainers into a trust account until they were earned and failure to return client retainers upon termination, neglect of client matters, failure to communicate with clients, and driving while ability impaired conviction and driving under the influence of alcohol charges.

The Colorado Supreme Court *In re Sather* 3 P.3d 403, 405, and 410-412 (Colo. 2000), held that flat fees are not earned upon receipt but are earned only after an attorney confers a benefit on or performs a legal service for a client. An attorney must place flat fees into a trust account until they are earned. (See also Colo. RPC 1.5 (f) (enacted in 2002).

Marquez/Minor Matter

- a. Casey Minor retained Respondent in January of 2005 for the sole purpose of preparing and filing a parenting plan for her and the father of her child, Dustin Hapl.
- c. Casey Minor and Dustin Hapl had an amicable relationship, and had already agreed to the terms of the parenting plan and amount of child support. They both met with Respondent and told him of the terms of their agreement. Respondent said he would prepare and file the agreement.
- d. Also at this time, Casey Minor paid a \$1,000.00 flat fee retainer to Respondent.
- e. Casey. Minor and Dustin Hapl met with Respondent a couple of times to "fill in the blanks" on their parenting plan. Before they heard anything further from Respondent, Mr. Hapl became unemployed. Ms. Minor spoke with Respondent and asked him what needed to be done in view of Mr. Hapl's unemployment. Respondent said he would make another appointment to speak with her and Mr. Hapl. Respondent was supposed to call Ms. Minor back that day but did not.

f. At this point in time, respondent stopped returning Ms. Minor's calls, despite numerous messages by her and her family. Finally, respondent called Ms. Minor and gave her excuses for the delay such as, "I wrecked my car," and "I've been in court." Respondent said he would make an appointment with Ms. Minor and Mr. Hapl for the following week. Ms. Minor never heard from respondent again and did not receive any portion of her \$1,000.00 retainer back.

g. Ms. Minor received two bills from respondent in February and March of 2005. The bills itemize the time spent and dollars billed in hours. Respondent said these bills were gratuitous, just to show Ms. Minor what work had been done. Even though respondent billed \$648.24 (and therefore owes \$351.76 according to his records), he admitted he owed Ms. Minor the entire \$1,000.00 since he did not complete the work she retained him to do. As a part of the Supreme Court of Colorado disciplinary proceeding, Respondent made full restitution to Ms. Minor.

Jewell Matter

a. Dadeon Jewell was charged with unlawful possession with intent to distribute a controlled substance with respect to his involvement in a methamphetamine lab. In the fall of 2004, Mr. Jewell discussed the possibility of Respondent representing him in the criminal matter; however, Mr. Jewell could not produce a sufficient retainer.

b. Respondent continued to see Mr. Jewell during some AA meetings at the jail. Respondent stated that he also met with Mr. Jewell numerous times in the fall of 2004 individually to discuss his case. At some point, Respondent stated he reviewed all fourteen of Mr. Jewell's criminal files for no charge.

c. In May of 2005, complainant Doris Jewell (Mr. Jewell's mother) retained Respondent to represent her son with respect to the filing of a single motion related to a reduction in the amount of Mr. Jewell's bail bond, which was set at \$280,000.00.

d. At this time, Ms. Jewell paid respondent a \$2,500.00 flat fee retainer.

e. Respondent entered his appearance on June 17, 2005, and filed a motion to withdraw on June 22, 2005. Respondent prepared a three-page single spaced draft of the motion for reduction of bond, but never actually filed the motion with the court or provided a copy of the draft to Mr. Jewell.

f. In July of 2005, Mr. Jewell pled guilty and was sentenced to seven years in prison. At that time, Respondent has not refunded any of Ms. Jewell's \$2,500.00 retainer.

g. Even though he performed some work on Mr. Jewell's matter by preparing a draft of the motion to withdraw, Mr. Jewell received no benefit from the work performed by Respondent. Respondent admitted he owed Ms. Jewell her entire \$2,500.00 retainer because he did not complete the work he was retained to do. As part of the Supreme Court of Colorado disciplinary proceeding, Respondent made full restitution to Ms. Jewell.

Wheeler Matter

a. Respondent represented Deena Wheeler in three criminal matters in Denver, Adams and Jefferson Counties. Ms. Wheeler hired respondent in approximately late fall of 2004 or January of 2005.

- b. Ms. Wheeler paid \$5,000.00 to respondent as a flat fee for these three criminal matters.
 - i. Denver County Matter
- c. Ms. Wheeler was charged with speeding and driving under revocation. A hearing was set for June 24, 2005.
- d. Respondent did not advise Ms. Wheeler that she needed to appear in court on that date and she did not appear, as she believed that Respondent would appear and his appearance would be satisfactory. However, Respondent did not appear on that date because he was in the hospital for alcoholism.
- e. Due to her failure to appear at the hearing, Ms. Wheeler was arrested on July 17, 2005, and was required to post bond to get out of jail.
 - ii. Adams County Matter
- f. This matter related to a DUI received by Ms. Wheeler.
- g. At the outset of the case, respondent filed a few pleadings and reviewed the district attorney's discovery.
- h. Respondent also attended at least one hearing and reached a plea bargain with the district attorney. However, due to Ms. Wheeler's condition at the time, Respondent asked if the district attorney would defer the plea bargain for sixty days. A hearing was thus set for June 24, 2005.
- i. Ms. Wheeler did not know she was required to attend the hearing on June 24, 2005.
- j. Neither Ms. Wheeler nor Respondent attended the June 24, 2005 hearing. Ms. Wheeler was arrested on July 17, 2005, for failure to appear at the hearing, and was required to post bond to get out of jail.
 - iii. Jefferson County-Matter
- k. Ms. Wheeler was charged with driving under revocation.
 - l. Ms. Wheeler appeared in court on July 22, 2005, at which time a sentencing hearing was set for August 29, 2005.
 - m. Ms. Wheeler advised the court that her attorney was not able to appear due to illness. The court advised Ms. Wheeler that Respondent was not attorney of record. The court did not believe Respondent was Ms. Wheeler's attorney until she found paperwork that Respondent had signed regarding this retainer.
 - n. Ms. Wheeler left messages for Respondent during June and July 2005, approximately three to five times per week, but did not receive a return telephone call from Respondent.
- iv. Other Work Performed by Respondent for Ms. Wheeler

o. In addition to any work performed on the above three matters, as part of the work he did for the \$5,000.00 retainer, Respondent attempted to appeal Ms. Wheeler's revocation of her license with the Colorado Motor Vehicle Department. He prepared a letter for Ms. Wheeler's physician to sign to support the appeal. Respondent also met with Ms. Wheeler a total of five times and spoke with her on the phone approximately ten times. However, Respondent did not contemporaneously keep time records and never prepared an accounting of the actual hours spent. Due to his failure to complete the work he was retained to do, Respondent admitted he owed Ms. Wheeler her entire \$5,000.00 retainer. As part of the Supreme Court of Colorado disciplinary proceeding, Respondent made full restitution to Ms. Wheeler.

Applefield Matter

- a. Respondent was retained to represent Ms. Applefield in a DUI case.
- b. Ms. Applefield paid respondent a \$2,500.00 flat fee retainer.
- c. However, Respondent admitted he owed Ms. Applefield her entire \$2,500.00 retainer, since he did not complete the work he was retained to do. As part of the Supreme Court of Colorado disciplinary proceeding, Respondent made full restitution to Ms. Applefield.

Reddick Matter

- a. Carol Reddick retained Respondent in December of 2004 to represent her with respect to a DUI citation.
- b. Ms. Reddick paid Respondent a \$5,000.00 flat fee retainer.
- c. After Ms. Reddick retained Respondent, she received a second DUI citation.
- d. Ms. Reddick paid Respondent a second \$5,000.00 flat fee retainer to represent her in that matter.
- e. Respondent appeared in court on behalf of Ms. Reddick two times to request postponements of a hearing because Ms. Reddick was in an alcohol treatment facility.
- f. Respondent admitted he owed her the entire \$10,000.00 retainer, since he did not complete the work he was retained to perform. As part of the Supreme Court of Colorado's disciplinary proceeding, Respondent made full restitution to Ms. Reddick.

The proceedings in The Supreme Court of the State of Colorado provided Respondent with fundamental constitutional protection.

STATEMENT OF STIPULATED CONCLUSIONS OF LAW

The Marquez/Minor Matter.

1. By failing to complete the parenting plan for Minor, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

2. By failing to return Minor's telephone calls about completing the parenting plan, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of California Business and Professions Code ("B&P Code"), section 6068 (m).

3. By failing to refund Minor's \$1000.00, Respondent failed to promptly refund a fee paid in advance that has not been earned in wilful violation of RPC, rule 3-700 (D) (2).

The Jewell Matter.

4. By failing to file the motion for reduction of bond and by not providing a copy of the motion to Mr. Jewell, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

5. By failing to refund Jewell's \$2500.00, Respondent failed to promptly refund a fee paid in advance that has not been earned in wilful violation of RPC, rule 3-700 (D) (2).

The Wheeler Matter.

6. The Denver County Matter: By failing to advise Wheeler that she needed to appear in Court for a hearing on June 24, 2005, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

7. The Adams County Matter: By failing to advise Wheeler that she needed to appear in Court for a hearing on June 24, 2005, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

8. The Jefferson County Matter: By failing to make a formal appearance in Court as counsel of record for Wheeler, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

9. By failing to return Wheeler's telephone calls concerning the Jefferson County Matter, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of California Business and Professions Code ("B&P Code"), section 6068 (m).

10. The Wheeler DMV Matter: By failing to complete the appeal of The DMV's revocation of Wheeler's driver's license, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct ("RPC"), rule 3-110(A).

11. By failing to refund Wheeler's \$5000.00, Respondent failed to promptly refund a fee paid in advance that has not been earned in wilful violation of RPC, rule 3-700 (D) (2).

The Applefield Matter.

12. By failing to refund Applefield's \$2500.00, Respondent failed to promptly refund a fee paid in advance that has not been earned in wilful violation of RPC, rule 3-700 (D) (2).

The Reddick Matter.

13. By failing to refund Reddick's \$10,000.00, Respondent failed to promptly refund a fee paid in advance that has not been earned in wilful violation of RPC, rule 3-700 (D) (2).

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. There are three criminal conviction proceedings involving Respondent that are included in this Stipulation. These proceedings are pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. In State Bar Court case number 09-C-14290: On November 3, 2005, Respondent was convicted of violating Colorado Vehicle Code, section 42-4-1301(1) (b) (Driving While Impaired By Alcohol Or Drugs, Or Both With Prior).
3. On November 17, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the violation of Colorado Revised Statutes section 42-2-1301 (b) (1) (b) (driving while impaired) of which Gary Lloyd Marsh was convicted involved moral turpitude or other misconduct warranting discipline.
4. In State Bar Court case number 09-C-14291: On July 26, 2006 Respondent was convicted of violating Colorado Vehicle Code, section 42-4-1301(1) (b) (Driving While Impaired By Alcohol Or Drugs, Or Both With Prior).
5. On October 22, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the violation of Colorado Revised Statutes section 42-2-1301 (b) (1) (b) (driving while impaired) of which Gary Lloyd Marsh was convicted involved moral turpitude or other misconduct warranting discipline.
6. In State Bar Court case number 09-C-14293: On May 5, 2006 Respondent was convicted of violating Colorado Vehicle Code, section 42-4-1301(1) (b) (Driving While Impaired By Alcohol Or Drugs, Or Both With Prior).
7. On October 22, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: whether the facts and circumstances surrounding the violation of Colorado Revised Statutes section 42-2-1301 (b) (1) (b) (driving while impaired) of which Gary Lloyd Marsh was convicted involved moral turpitude or other misconduct warranting discipline.

Respondent's three criminal convictions are other misconduct warranting State Bar discipline

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.

Respondent's culpability determined in the disciplinary proceeding in Colorado would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed; and

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 provides that the 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.

Standard 1.7 provides that if member is found culpable of misconduct in any proceeding in which discipline may be imposed, and the member has a record of one prior imposition of State Bar discipline, then the degree of discipline imposed in the current proceeding shall be greater than the discipline imposed in the prior proceeding unless the prior offense was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

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

The stipulated discipline of six (6) months actual suspension, two years suspension stayed, and two years probation with conditions is consistent with the Standards and it is an appropriate level of discipline.

AGGRAVATING CIRCUMSTANCES AND SUPPORTING FACTS.

1. Prior Discipline.

Respondent has one prior State Bar discipline. Please see Form Stipulation Re facts, Conclusions of Law and Disposition.

2. Harm to Clients:

a. Respondent's misconduct caused harm to Ms. Minor in the Marquez matter because Respondent did not complete the parenting agreement and he did not refund the \$1,000 flat fee retainer paid by Ms. Minor

b. Respondent's misconduct caused harm to Mr. Dadeon Jewell in the Jewell matter because Respondent did not file the motion for bail reduction and he did not refund the \$2500 flat fee retainer paid on behalf of Mr. Jewell.

c. Respondent's misconduct caused harm to Ms. Deena Wheeler in four separate matters. In the Denver County Matter, Respondent failed to appear in Court and he failed to advise Ms. Wheeler to appear in Court for a proceeding where she was charged with speeding and driving under revocation. In the Adams County Matter, Respondent failed to appear in Court and he failed to advise Ms. Wheeler to appear in Court for a hearing concerning her arrest for driving under the influence of alcohol. As a result of Respondent's misconduct in these two matters. Ms. Wheeler was arrested and incarcerated. She was required to post bond to be released from jail.

In the Jefferson County Matter, Respondent did not file a notice of appearance with the Court or return Ms. Wheeler's telephone calls concerning another charge that Ms. Wheeler was driving under revocation. Ms. Wheeler appeared in Court without Respondent and the Court continued the hearing. In the DMV matter, Respondent did not complete Ms. Wheeler's appeal of the DMV's decision to revoke her driver's license and he did not refund the \$5000 retainer paid by Ms. Wheeler for representing represented in the four matters.

d. Respondent caused harm to Ms. Applefield in the Applefield matter because he did not complete the work for which he was retained and he did not refund the \$2500 retainer Ms. Applefield paid him.

e. Respondent caused harm to Carol Reddick in the Reddick matter because he did not complete the work for which he was retained and he did not refund two \$5,000 flat fee retainers (total \$10,000) paid by Ms. Reddick.

3. Multiple Acts of Misconduct:

Respondent engaged in multiple acts of misconduct by failing to competently perform legal services and failed to refund unearned fees in the Marquez/Minor, Jewell, Wheeler, Applefield, and Reddick matters.

MITIGATING CIRCUMSTANCES AND SUPPORTING FACTS.

1. Candor And Cooperation with the State Bar:

Respondent displayed candor and cooperation with the State Bar by admitting in this proceeding the misconduct in the Colorado disciplinary proceeding. On his own initiative and at his own expense, Respondent personally obtained and sent to the State Bar of California certified copies of court records from three different jurisdictions in Colorado where his three alcohol related convictions took place.

2. Emotional/Physical Difficulties and Rehabilitation:

Respondent's misconduct in the Marquez/Miller, Jewell, Wheeler, Applefield, and Reddick matters and his three criminal convictions were related to alcohol abuse. Respondent submitted letters from Eric Gibb, M.D., Musharraf Nizami, M.D., and Lynn M. Baker (Certified Alcohol Counselor) attesting to his abstinence from alcohol for approximately four and one half (4-1/2) years and his continuing efforts to maintain his sobriety by attending meetings of Alcoholics Anonymous and attending weekly meetings with a certified alcohol counselor.

Respondent had problems with alcoholism since his early twenties. In June, 2004, three weeks shy of his second anniversary of being sober, he drank while on a business trip. Thereafter, Respondent's alcoholism worsened. Respondent also experienced physical, financial, and personal problems that contributed to his worsening alcohol abuse.

3. Good Character:

Respondent submitted a Declaration from California attorney Mark I. Kincaid, and letters from Colorado attorney Anthony L. Martinez, Darrin L. Blankenbeckler (Community President of the Community Banks of Colorado for the Buena Vista, Colorado Service area), Mark Campbell (Branch President of Community Banks of Colorado for the Salida, Colorado Service area), Rich Wertz (attesting to Respondent's care during Mr. Wertz's serious illness), David B. Dualdt, C.P.A.

(Respondent's current accountant, former business partner, and friend), David Kelley (Owner of Hi-Rocky/Radio Shack Store, Buena Vista, Colorado and former client), Patricia Yale (friend), Chief Jimmy Tidwell (Chief of Police of Buena Vista, Colorado), Sandy Rodman (Owner of S&S Closings and Escrow, Inc.), Cara Russell (Mayor, Buena Vista, Colorado). All of these persons attested to Respondent's good character and trustworthiness.

STATE BAR ETHICS SCHOOL.

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School. Respondent currently is living in Colorado. Colorado does not have Ethics School comparable to the California State Bar's Ethics School. Respondent may satisfy the Ethics School requirement either by attending Ethics School in California or by completing six (6) hours of in person ethics given by an approved MCLE provider.

COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of probation imposed in the underlying criminal matters and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A (6), was January 20, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 14, 2009, the prosecution costs in this matter are \$6544.00. 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.

In the Matter of
Gary L. Marsh

Case number(s):
09-J-13136, 09-C-14290, 09-C-14291, 09-C-14293

Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least 4 meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

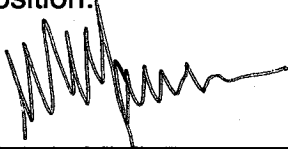

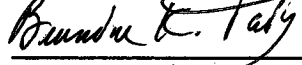
Respondent may comply with conditions c. and d. above by providing blood and/or urine samples to a licensed medical laboratory in Colorado that complies with Department of Transportation (DOT) requirements for substance abuse testing.

(Do not write above this line.)

In the Matter of Gary L. Marsh -- Bar #96825	Case number(s): 09-J-13136, 09-C-14290, 09-C-14291, 09-C-14293
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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>January 21, 2010</u> Date	 _____ Respondent's Signature	<u>Gary L. Marsh</u> Print Name
<u>January 22, 2010</u> Date	 _____ Respondent's Counsel Signature	<u>Michael Wine</u> Print Name
<u>January 22, 2010</u> Date	 _____ Deputy Trial Counsel's Signature	<u>Brandon K. Tady</u> Print Name

(Do not write above this line.)

In the Matter Of Gary L. Marsh	Case Number(s): 09-J-13136, 09-C-14290, 09-C-14291, 09-C-14293
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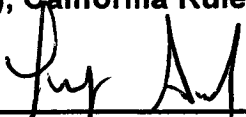
ORDER

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.)**

Feb 8, 2010
Date


Judge of the State Bar Court

LUCY ARMENDARIZ

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 February 8, 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:

**MICHAEL E. WINE
301 N LAKE AVE STE 800
PASADENA, CA 91101 - 5113**

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:

BRANDON K. TADY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 8, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court