

(Do not write above this line.)

State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Mia R. Ellis Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 213-765-1380</p> <p>Bar # 228235</p>	<p>Case Number (s) 09-N-10044</p>	<p>(for Court's use)</p> <p>FILED</p> <p>MAY 19 2009 <i>XOC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Richard Allen Espinoza 816 Lake Avenue La Verne, CA 91750 909-599-3013</p> <p>Bar # 74367</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: RICHARD ALLEN ESPINOZA</p> <p>Bar # 74367</p> <p>A Member of the State Bar of California (Respondent)</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 **June 28, 1977**.
- (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 **9** 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."

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

(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: **for the 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 **06-C-12759**
 - (b) Date prior discipline effective **September 7, 2008**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **section 6068(a) of the Business and Professions Code and rule 9.10 of the California Rules of Court**
 - (d) Degree of prior discipline **two year stayed suspension and three year probation and eighteen month actual suspension.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

81-O-18-LA. On or about 6/22/82 for violating section 6103 and 6106 of the Business and Professions Code . Discipline included private reproof.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

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

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

Additional mitigating circumstances

See page 8

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 **three (3) 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 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: **Respondent was Ordered to take Ethics School as part of his probation condition in case number 06-C-12759. He completed Ethics School February 5, 2009.**
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

No MPRE recommended. Reason: **The protection of the public does not require passage of the MPRE in this case as Respondent was Ordered to take the MPRE as part of Case No. 06-C-12759. He took the MPRE March 7, 2009..**

- (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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of: Richard Allen Espinoza

Case Numbers: 09-N-10044

Respondent admits that the following facts are true and that he is culpable of violation of the specified statute and/or Rules of Professional Conduct:

Facts

1. On March 17, 2008, Respondent stipulated to violating Business and Professions Code Section 6068(a) in the facts, conclusions of law and disposition of his State Bar Case 06-C-12759 (S164153).
2. The California Supreme Court filed an Order No. S164153 (hereinafter "9.20" Order). The 9.20 Order included a requirement that Respondent comply with Rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the 9.20 Order.
3. On or about August 8, 2009, the Clerk of the Supreme Court of the State of California properly served upon Respondent a copy of the 9.20 Order. Respondent received the 9.20 Order.
4. The Supreme Court Order became effective on September 7, 2008, thirty days after the 9.20 Order was filed. Thus, Respondent was ordered to comply with subdivisions (a) and (b) of rule 9.20 of the California Rules of Court no later than October 7, 2008, and was ordered to comply with subdivision (c) of Rule 9.20 no later than October 17, 2008.
5. On September 15, 2008, the Office of Probation sent Respondent a letter outlining his probation requirements including the need to comply with the provisions of Rule 9.20.
6. Although Respondent's address was correct when contacted by the Office of Probation, he does not recall receiving the letter.
7. Respondent failed to file with the Clerk of the State Bar Court a declaration of compliance with Rule 9.20 (a) and (b), California Rules of Court, as required by Rule 9.20(c).
8. On January 8, 2009, the Office of Probation forwarded to the Office of the Chief Trial Counsel notification of Respondent's non-compliance with Rule 9.20.
9. On January 9, 2009, the Office of Chief Trial Counsel (OCTC) sent Respondent a letter that he was in violation of Rule 9.20, and unless a pre-filing settlement was reached, a Notice of Disciplinary Charges would be filed.
10. Respondent received the letter.

11. On or about January 14, 2009, Respondent contacted the OCTC and the Office of Probation in response to the letter.
12. On January 20, 2009, Respondent served the 9.20 compliance declaration on the State Bar Court and the Office of Probation.
13. On January 21, 2009, the 9.20 declaration was filed with the State Bar Court.

Conclusions of Law

By not filing a declaration of compliance with Rule 9.20 in conformity with the requirements of Rule 9.20 (c), Respondent failed to timely comply with the provisions of Supreme Court Order No. S164153 requiring compliance with Rule 9.20, California Rules of Court. By the foregoing conduct, Respondent willfully violated rule 9.20, California Rules of Court.

Supporting Authority for Discipline

Although the Supreme Court gives the Standards “great weight,” (*In re Silvertown* (2005) 36 Cal 4th 81, 92) it has been held that the Standards should not be applied in a “talismanic fashion” and “absent strong mitigating circumstances, a rule 955 violation warrants disbarment.” *In the Matter of Van Sickle*, (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *In the Matter of Lynch* (1995) 3 Cal. State Bar Ct. Rptr. 287, 296.

Rule 9.20(d) provides that a suspended member’s willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation. Moreover, Standard 1.7(b) provides, in pertinent part that “if found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.”

Aggravation

An aggravating factor in this proceeding is Standard 1.2(b) which provides, “circumstances which shall be considered aggravating include: (i) the existence of prior record of discipline and the nature and extent of that record.” Although Respondent has two prior records of discipline, the 1982 case resulted in a private reproof and the misconduct was remote in time as it occurred over twenty-five years ago. Respondent practiced without discipline until his discipline in the underlying case.

Mitigation

The Respondent has provided the State Bar with evidence to support compelling mitigation. Respondent suffered from numerous health conditions, including hypertension, dyslipidemia, sleep apnea, and diabetes mellitus type II, and sensorineural hearing loss which overlapped with the time his 9.20 declaration was due. Respondent has provided medical records during the time period of his untimely compliance with Rule 9.20. The records remain in the possession of the State Bar.

In or about September 2008, Respondent was also experiencing family problems that required law enforcement and court intervention. Respondent’s daughter has medical problems and lived with Respondent and his wife. They are also caring for her two children. The daughter’s boyfriend threatened the family and Respondent subsequently obtained a Restraining Order. These problems

overlapped with the due date of Respondent's Rule 9.20 declaration. Respondent has provided court documents during the period of time of his untimely compliance with Rule 9.20. The records remain in the possession of the State Bar.

Other Mitigation

Respondent has cooperated with the State Bar throughout the investigation and proceedings, and there was no harm to clients.

Case Law

In *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 207, while Respondent did not timely file the 955 affidavit, the Court found that respondent's violation of the rule did not harm clients and he should be actually suspended from the practice of law for nine months.

In *In the Matter of Friedman*, (Review Dept. 1993) 2 State Bar Ct. Rptr. 527 the court found that while Respondent willfully violated rule 955 by failing to file his affidavit with the State Bar, he did so before any discipline proceedings were initiated or the referral order was filed. The court found that Respondent "awakened to his responsibilities" and his affidavit was late by only 14 days. The Court was "encouraged by his participation in his disciplinary matter, his cooperation with the State Bar, and his short delay in his full compliance with all requirement of rule 9.20." (*id.* at pp. 534 - 535). Respondent was actually suspended for 30 days.

Similarly, in *Durbin v. State Bar*, (1979) 23 Cal.3d 461, although the attorney notified the proper parties of his suspension, the Respondent did not file the affidavit required by rule 955(c). The Court suspended Respondent for six months or until he filed the affidavit, whichever was longer.

The stipulated discipline is two year stayed suspension, three years probation, and six months actual suspension. The compelling mitigating circumstances and the additional safeguard of Respondent's compliance with standard 1.4(c)(ii), supports deviation from the standards and adequately protects the public, the courts, and the legal profession from further misconduct.

Pending Proceedings

The disclosure date referred to on Page 2, paragraph A(7), was made on April 13, 2009,

Costs of Disciplinary Proceedings

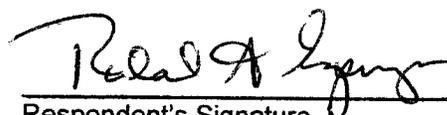
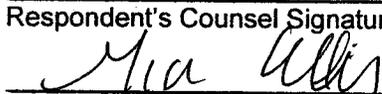
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 13, 2009, the costs in this matter are approximately \$1,641. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.

(Do not write above this line.)

In the Matter of RICHARD ALLEN ESPINOZA	Case number(s): 09-N-10044
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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>APRIL 20, 2009</u> Date <u>4/27/09</u> Date	<u></u> Respondent's Signature	<u>RICHARD A. ESPINOZA</u> Print Name
<u>4/27/09</u> Date	<u></u> Respondent's Counsel Signature Deputy Trial Counsel's Signature	<u>Mia R. Ellis</u> Print Name

(Do not write above this line.)

In the Matter Of RICHARD ALLEN ESPINOZA	Case Number(s): 09-N-10044
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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.

PAGE 4 - DELETE THE "X" MARK IN BOX E. (1).

*PAGE 7 - PARAGRAPH 3 - DELETE "AUGUST 8, 2009"
INSERT "AUGUST 5, 2009"*

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.)**

5-18-09
Date


Richard A. Platel
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 19, 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:

RICHARD ALLEN ESPINOZA
816 LAKE AVENUE
LA VERNE CA 91750

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:

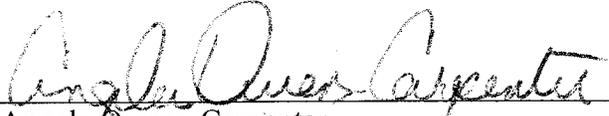
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

MIA ELLIS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 19, 2009.


Angela Owens-Carpenter
Case Administrator
State Bar Court