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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<p>Counsel For The State Bar</p> <p>Kimberly G. Anderson                      The State Bar of California                      1149 S. Hill Street                      Los Angeles, CA 90015                      (213) 765-1083</p> <p>Bar # 150359</p>	<p>Case Number(s):                      09-O-12347, 09-O-14064, 09-O-15471 and 11-N-10894</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt;"><b>FILED</b></p> <p style="text-align: center; font-size: 18pt;"><b>MAY 13 2011</b> <i>HC</i></p> <p style="text-align: center; font-size: 12pt;"><b>STATE BAR COURT                      CLERK'S OFFICE                      LOS ANGELES</b></p>
<p>In Pro Per Respondent</p> <p>Robert Francis Graham                      629 Third Avenue, Suite "I"                      Chula Vista, CA 91910</p> <p>Bar # 76589</p>	<b>PUBLIC MATTER</b>	
<p>In the Matter of:                      Robert Francis Graham</p> <p>Bar # 76589</p> <p>A Member of the State Bar of California                      (Respondent)</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted December 21, 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 20 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."



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- (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 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case 06-O-14355
  - (b)  Date prior discipline effective December 14, 2008
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules 3-110(a) and 4-100(b)(3) of the Rules of Professional Conduct and Business and Professions Code, sections 6068(m) and 6068(i).
  - (d)  Degree of prior discipline One (1) year probation and 30 days' stayed suspension.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court Case No. 09-O-13288; Effective date of discipline: August 21, 2010; Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code, section 6068(k); Degree of Prior Discipline: One (1) year stayed suspension and 60 days actual suspension and until the court grants a motion pursuant to Rule 205, Rules of Procedure of the State Bar of California.

- (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.

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- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Stipulation Attachment at page 13 (Attachment Page 7).
- (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.
- (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.

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- (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 Stipulation Attachment at pages 11-13 (Stipulation Attachment pages 5-7).

**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 one (1) year.
- 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 the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

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- (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: See Other Conditions at page 13 (Stipulation Attachment page7)..
- (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:
  - Substance Abuse Conditions
  - Medical Conditions
  - Law Office Management Conditions
  - Financial Conditions

**F. Other Conditions Negotiated by the Parties:**

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- (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 5.162(A) & (E), Rules of Procedure.**

No MPRE recommended. Reason: Respondent recently took and passed the exam on August 10, 2010 in compliance with a prior disciplinary order in case no. 06-O-14355. (See, In the Matter of Trousil (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 229, 244.) Therefore, "The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. (See, In the Matter of Respondent G (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181.

- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:** See Other Conditions at pages 13-16 (Stipulation Attachment pages 7-10).

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In the Matter of: Robert Francis Graham	Case Number(s): 09-O-12347, 09-O-14064, 09-O-15471 and 11-N-10894
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### 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

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

#### 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

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

#### 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";

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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.



7. The homeowner never filed an Answer in Harvey's civil matter.
8. On January 16, 2009, the Superior Court scheduled an Order to Show Cause hearing ("OSC"), because Respondent had failed to request the entry of default in Harvey's civil matter. The Superior Court scheduled the OSC for February 18, 2009, and served a notice of the OSC upon Respondent. Respondent received notice of the OSC.
9. Respondent appeared at the OSC and asked the court to continue the OSC for 60 days. The court granted Respondent's request and reset the OSC for April 21, 2009. Respondent had actual notice of the reset OSC date.
10. On April 21, 2009, Respondent failed to appear at the reset OSC.
11. On April 21, 2009, the Superior Court scheduled a second Order to Show Cause hearing regarding dismissal of Harvey's civil matter (2nd OSC). The Superior Court scheduled the 2nd OSC for June 24, 2009, and served a notice of the 2nd OSC upon Respondent. Respondent received notice of the 2nd OSC.
12. On April 21, 2009, Respondent failed to appear at the 2nd OSC, and the court dismissed Harvey's civil matter.
13. On March 6, 2009, the State Bar opened an investigation, case no. 09-O-12347, pursuant to a complaint from Mr. Harvey.
14. On July 22, 2009, and on August 19, 2009, a State Bar investigator wrote to Respondent regarding the allegations in case no. 09-O-12347. The investigator's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. Respondent received the letters.
15. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in case no. 09-O-12347.
16. Respondent had until August 5, 2009, and September 2, 2009, respectively, to respond to the investigator's letters.
17. Respondent never responded to the investigator's letters or otherwise communicated with the investigator.

#### CONCLUSIONS OF LAW:

18. By failing to appear for scheduled court dates, and causing the dismissal of Harvey's civil matter due to Respondent's failure to prosecute the matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
19. By not providing a written response to the allegations in case no. 09-O-12347 or otherwise cooperating in the investigation of the matter, Respondent willfully failed to cooperate in a disciplinary investigation in violation of Business and Professions Code, section 6068(i).

Case No. 09-O-14064 (State Bar Investigation)

FACTS:

20. Between in or about February 2009 and July 2009, Respondent maintained a client trust account at Washington Mutual Bank, account no. \*\*\*-\*\*\*687-3 ("CTA").

21. Between the period from in or about February 2009 to May 2009, Respondent deposited and maintained personal funds including earned fees in his CTA and Respondent issued multiple checks, and/or made electronic withdrawals, from his CTA for personal purposes including, but not limited to, the following:

DATE	AMOUNT	PAYEE	TYPE
February 25, 2009	\$70.00	Home Depot	Check No. 90224
March 5, 2009	\$12.51	PayPal	electronic withdrawal
March 9, 2009	\$175	Verizon Wireless	electronic withdrawal
March 16, 2009	\$24.99	LA Fitness	electronic withdrawal
April 6, 2009	\$160.00	Verizon Wireless	electronic withdrawal
April 13, 2009	\$22.09	PayPal	electronic withdrawal
April 15, 2009	\$24.99	LA Fitness	electronic withdrawal
May 15, 2009	\$24.99	LA Fitness	electronic withdrawal

22. On July 31, 2009, the State Bar opened an investigation, case no. 09-O-14064, pursuant to a State Bar initiated investigation.

23. On August 17, 2009, and September 1, 2009, a State Bar investigator wrote to Respondent regarding the allegations in case no. 09-O-14064. The investigator's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar of California membership address. Respondent received the letters.

24. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in case no. 09-O-14064.

25. Respondent had until August 31, 2009, and September 15, 2009, respectively, to respond to the investigator's letters.

26. Respondent never responded to the investigator's letters or otherwise communicated with the investigator.

CONCLUSIONS OF LAW:

27. By issuing checks and/or making electronic withdrawals from his CTA to pay personal expenses, Respondent deposited or commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, Respondent willfully violated Rule 4-100(a) of the Rules of Professional Conduct.

28. By not providing a written response to the allegations in case no. 09-O-14064 or otherwise cooperating in the investigation of the matter, Respondent willfully failed to cooperate in a disciplinary investigation in violation of Business and Professions Code, section 6068(i).

Case No. 09-O-15471 (Complainant: Anna Yeung)

FACTS:

29. On September 1, 2009, the State Bar opened an investigation, case no. 09-O-15471, pursuant to a complaint from Anne Lee.

30. Even though Lee paid Respondent \$3,000 in advanced fees in March 2009, Respondent never provided Lee with an accounting for any work performed.

31. On October 8, 2009, and on November 2, 2009, a State Bar investigator sent letters to Respondent regarding the allegations in case no. 09-O-15471. Respondent received the letters.

32. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in case no. 09-O-15471.

33. Respondent had until October 22, 2009, and until November 16, 2009, respectively, to respond to the investigator's letters.

34. Respondent never responded to the investigator's letters or otherwise communicated with the investigator.

CONCLUSIONS OF LAW:

35. By not providing a written response to the allegations in case no. 09-O-15471 or otherwise cooperating in the investigation of the matter, Respondent willfully failed to cooperate in a disciplinary investigation in violation of Business and Professions Code, section 6068(i).

36. By never providing an accounting to Lee for the \$3,000 in advanced fees she paid to him, Respondent willfully violated Rule 4-100(b)(3) of the Rules of Professional Conduct.

Case No. 11-N-10894 (Rule 9.20 Violation)

FACTS:

37. On July 22, 2010, the California Supreme Court filed Order No. S183009 ("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) within 120 and 130 days, respectively, after the effective date of the 9.20 Order.

38. On July 22, 2010, 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.

39. The 9.20 Order became effective on August 21, 2010, thirty days after it was filed. Thus Respondent was ordered to comply with subdivision (a) and/or (b) of rule 9.20 of the California Rules of

Court no later than on or about December 19, 2010, and was ordered to comply with subdivision (c) of rule 9.20 no later than on or about December 29, 2010.

40. Respondent failed to timely 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). However, on April 8, 2011, the Respondent submitted his rule 9.20 affidavit and the State Bar Court accepted it as filed on that date.

#### CONCLUSIONS OF LAW:

41. By not timely filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c) until April 8, 2011, Respondent failed to timely comply with the provisions of Supreme Court Order No. S183009 requiring compliance with rule 9.20, California Rules of Court.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was April 22, 2011.

#### MITIGATION.

##### ADDITIONAL MITIGATING FACTORS NOT DESCRIBED IN STANDARD 1.2(e).

Respondent was admitted to practice law in 1977 and had no record of discipline until 2008.

Beginning in approximately 2007, which predated the time he entered into the stipulated discipline in his first disciplinary matter in State Bar Court Case No. 06-O-14355 (Supreme Court Case No. S166639) ("Discipline #1"), Respondent began to experience depression. At the time Respondent entered into the stipulation for discipline in his first disciplinary matter, he was credited with mitigation for family problems.

Following his stipulation in Discipline #1, Respondent experienced additional family, financial and mental and physical health conditions, which do not amount to mitigation under Standard 1.2(e) of the Standards for Attorney Sanctions for Professional Misconduct, but which do explain how the misconduct occurred in the current disciplinary matter and which warrants departure from a strict imposition of Standard 1.7(b) in this case.

Respondent had been dealing with his mother's illness and subsequent death prior to the time he stipulated to discipline in the first case. After she passed away, he did not realize the effect on him emotionally. He began to experience episodes of anxiety attacks and was told his testosterone levels were extremely low. Respondent believed this, coupled with his grief over the death of his mother, upset the normal balance of his hormone system.

After his mother's death, Respondent had to spend more time attending to his father's continued and additional heart issues. His father had previously had a by-pass and suffered from and continues to suffer from congestive heart failure.

Between the time his mother passed away and the present, Respondent reports that the following people died, affecting his depression: his Aunts Ruth Bruner, Jeanne Graham, Margaret Graham and Jesse Rex.

Respondent also reports that his former business partners, George Paluso and Gerald Marolda passed away. Consequently, during this time period, whenever Respondent's telephone would ring at an odd hour, he would relive these losses.

Respondent reports that he suffered the loss of his entire savings, which he invested in Hidden Vista Estates, LLC. Respondent claims he invested \$1,825,000.00 to develop real property located at 657 East Naples, Chula Vista, California, but with the turn in the real estate market, the property was foreclosed upon in 2008.

Respondent reports that, during this time, he was prescribed medications to bring him back to normal, but Respondent believes the medications resulted in significant weight gain and large mood swings. Respondent represents that he would go from completely normal to completely unmotivated over the course of various months. Respondent represents that he was prescribed Sertaline (generic for Zoloft), Peroxatine (generic for Paxil), Temazepam, Metoprolol and Lisinopril. Respondent's opinion is that these medications, coupled with the testosterone cyponate rendered him non-functional and without energy to perform the simplest of daily functions. Respondent determined in his own mind that he was being over-medicated, and that he no longer wanted to deal with issues involving multi-layered drug therapy. Respondent has not presented any doctor's opinion to the State Bar regarding the proper diagnosis, course of treatment and prognosis.

Respondent also reports having problems with high blood pressure and sleep apnea, which have also significantly increased his depression. He now sleeps with a CPAP machine to ensure that he is not suffering from sleep apnea and he has stopped taking medications other than metoprolol, temazepam and a small dosage of testosterone.

Respondent sought out the assistance of a Georgia doctor who has been a friend of his for many years, named Dr. Randy Smith. Dr. Smith is not a licensed California medical doctor. Respondent claims that Dr. Smith, who is a CEO of Cenegics, a nation-wide alternative medicine organization, has helped to remove him from the drugs prescribed by his former doctor. Respondent claims that Dr. Smith has designed a program of exercise and alternative medicines that he believes will assist Respondent's emotion and mental states, and will prevent further depressive episodes. Respondent has not provided any report from Dr. Smith about his diagnosis, course of treatment and prognosis. The State Bar does not agree that Respondent has been or is being properly diagnosed or treated, but Respondent acknowledges this will be an issue raised in the Standard 1.4(c)(ii) hearing should the Respondent petition this court for reinstatement in the future.

As a result of the financial problems and stress, Respondent reports that he and his wife separated for a period of time, but they are currently working on reconciling.

Respondent also reports that his health is much better, that he no longer experiences regular anxiety attacks and that he is able to recognize the beginning of depressive episodes. Respondent reports that he is able to be pro-active and with the assistance of regular exercise and naturopathic supplements he is regaining his full function. Respondent has not provided the State Bar with any medical opinion to establish this fact or any other evidence other than his own statements.

Due to his mental, physical, family and financial issues, Respondent did not comply with probation conditions in discipline #1, which led to the filing of a new case, Case No. 09-O-13288 (Supreme Court Case No. S183009) ("Discipline #2"). Respondent defaulted in Discipline #2, which led to an order from the court that Respondent be suspended for sixty days and until a motion under former Rule 205 of

the Rules of Procedure of the State Bar of California was granted. Respondent was suspended in that case, effective November 7, 2009 and continues to be suspended in that case currently. As is set forth in the "Other Conditions of Probation" section below, Respondent agrees not to file a Rule 205 motion until the time he is eligible to file his Standard 1.4(c)(ii) petition as a result of the discipline in this case.

Because Respondent was not paying attention to his ethical obligations, and because he defaulted in Discipline #2, Respondent overlooked the fact that he was obligated to file a Rule 9.20 affidavit in that case once he had been suspended more than 90 days. Respondent does not make excuses for his failure to timely file the affidavit, but upon meeting with the State Bar, Respondent did proceed to file his Rule 9.20 affidavit on April 8, 2011.

Respondent also acknowledges that the misconduct in all of the matters was caused or contributed to by his mental, physical, family and financial issues. But Respondent acknowledges this does not excuse his misconduct.

### **AGGRAVATION.**

Respondent has two prior impositions of discipline, which are described above.

Respondent's misconduct also harmed his client, John Harvey, as Harvey's lawsuit was dismissed and he lost his cause of action in San Diego Superior Court Case No. 37-2007-63167-CU-OR-SC.

### **OTHER PROBATION CONDITIONS.**

#### **Ethics School**

- Respondent was ordered to attend State Bar Ethics School and pass the test at the end of Ethics School as a condition of his probation in prior discipline case no. 06-O-14355, but he did not do so. Respondent represents that he will sign up for State Bar Ethics School and will complete the course before the discipline in this case becomes effective. If Respondent has taken Ethics School and passed the test at the completion of Ethics School before the discipline in this case becomes effective, then he shall submit proof to the Office of Probation with his first Quarterly Report and he will not be required to attend Ethics School in this case. (See, Rule 5.135, Rules of Procedure of the State Bar of California.)
- If Respondent does not submit proof to the Office of Probation of attendance at Ethics School and passage of the test at the end of Ethics School with his first Quarterly Report, then within one (1) year of the effective date of the discipline herein Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.

#### **Client Trust Account School**

- Respondent represents that he will sign up for State Bar Client Trust Account School and will complete the course before the discipline in this case becomes effective. If Respondent has taken Client Trust Account School and passed the test at the completion of Client Trust Account School before the discipline in this case becomes effective, then he shall submit proof to the Office of Probation with his first Quarterly Report and he will not be required to attend Client

Trust Account School in this case. (See, Rule 5.135, Rules of Procedure of the State Bar of California.)

- If Respondent does not submit proof to the Office of Probation of attendance at Client Trust Account School and passage of the test at the end of Client Trust Account School with his first Quarterly Report, then within one (1) year of the effective date of the discipline herein Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Client Trust Account School, and passage of the test given at the end of that session.

**Respondent's Rule 205 Motion in Prior Disciplinary Case No. 09-O-13288:**

- Respondent agrees as a condition of his probation in this case, that he will not file a motion pursuant to former Rule 205 of the Rules of Procedure in his disciplinary case no. 09-O-13288 until he is eligible to file his Standard 1.4(c)(ii) petition in the instant case.

**Fee Arbitration Conditions:**

**A. Duty to Notify Individuals of Right to Mandatory Fee Arbitration**

Within thirty (30) days of the effective date of discipline, Respondent agrees to send a letter by certified mail, return receipt requested, to the individuals set forth below and agrees to therein offer to initiate, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individuals, upon the request of any such individuals, regarding fees respondent received for representation of the former clients set forth below, unless Respondent has previously sent such a written offer to said individuals. The letter shall include the address and phone number of the Office of Probation along with a statement that the Office of Probation will be monitoring his fee arbitration conditions and may be contacted by the individual.

Anne Lee  
4449 Clairmont Dr.  
San Diego, CA 92117

**B. Upon Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration**

Within forty (40) days after the effective date of discipline, Respondent agrees to provide the Office of Probation with a copy of the letters offering to initiate and participate in fee arbitration with the individuals set forth above, along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

Within sixty (60) days after the effective date of discipline, Respondent agrees to provide the Office of Probation a declaration from each of the individuals setting forth that a letter had been received from Respondent offering to initiate, pay any costs and fees associated with the fee arbitration, and participate in fee arbitration.

Respondent agrees to advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any individual set forth above within fifteen (15) days after any such request or within sixty (60) days after the effective date of discipline, whichever is later. Respondent agrees to provide the Office of Probation with any information requested to verify Respondent's compliance,

including submission of any written request for fee arbitration or the submission of a declaration from any individual setting forth the date arbitration was requested.

Respondent agrees to initiate fee arbitration within fourteen (14) days of any request, including making any payment required by the organization conducting the fee arbitration. Respondent agrees to fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration with respect to any of the above individuals.

Respondent further agrees to accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent hereby agrees to abide by the arbitration award and foregoes the right to file an action seeking a trial de novo in court to vacate the award.

#### **Duty to Comply with the Arbitration Award**

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, or within sixty (60) days after the effective date of discipline, whichever is later, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent agrees to abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

#### **C. Obligation to Pay Restitution to the Client Security Fund.**

If the State Bar Client Security Fund has reimbursed any of the above individuals for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, respondent agrees to pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal amounts, Respondent will still be liable for interest payments to such individuals. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

#### **D. Waiver of Objections**

If the fee arbitration proceeding results in an award to any of the above individuals, Respondent waives any objections related to the Office of the Chief Trial Counsel, Client Security Fund or State Bar Court notification to any such individual regarding assistance in obtaining restitution or payment from the Client Security Fund or from Respondent.

#### **E. Effect of Failure to Comply with Fee Arbitration Conditions**

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in a motion to revoke his probation in this matter, the filing of new disciplinary charges and/or additional discipline. Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court ordering Respondent to pay back the full amount of attorneys' fees paid to Respondent by each of the individuals listed plus 10% interest from the date Respondent received the fees.

**F. Disputed Funds Must be Held in Trust**

Respondent must keep the disputed amount in a separate interest bearing trust account. If Respondent has removed the disputed amount from trust, Respondent must open a separate interest bearing trust account and deposit the disputed amount into such account within 30 days of the effective date of discipline. Respondent must provide evidence that the disputed amount of funds have remained in trust within 10 days of any request by the Office of Probation.

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a records of two prior impositions of discipline, the degree of discipline in the instant case shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

However, the Standards are not applied in a talismanic fashion. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.

Since Respondent has not been permitted to practice law since November 7, 2009, in addition to receiving a one year actual suspension, Respondent is ordered to remain suspended until he satisfies Standard 1.4(c)(ii), which will serve to protect the public in this matter since Respondent will be not be able to return to active status unless and until he proves he is rehabilitated and possesses the present fitness to practice law and the present learning an ability in the general law.

**DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
09-O-12347	Two	6068(m)
09-O-14064	Three	6106
09-O-15471	One	3-110(a)
09-O-15471	Two	3-700(d)(2)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 7, 2011, the prosecution costs in this matter are \$8,081.45. Respondent further acknowledges that

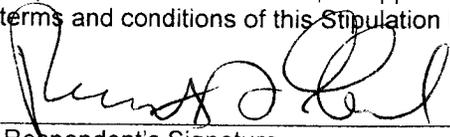
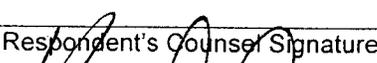
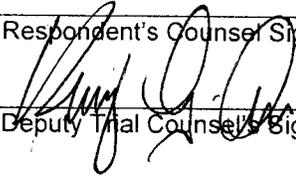
should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Robert Francis Graham	Case number(s): 09-O-12347, 09-O-14064, 09-O-15471 and 11-N-10894
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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 Facts, Conclusions of Law, and Disposition.

<u>4/26/2011</u> Date	 Respondent's Signature	<u>ROBERT GRAHAM</u> Print Name
<del>4/27/11</del> Date	 Respondent's Counsel Signature	 Print Name
<u>4/27/11</u> Date	 Deputy Trial Counsel's Signature	<u>KIMBERLY E. ANDERSON</u> Print Name

(Do not write above this line.)

In the Matter of: Robert Francis Graham	Case Number(s): 09-O-12347, 09-O-14064, 09-O-15471 and 11-N-10894
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### ACTUAL SUSPENSION ORDER

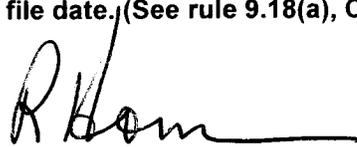
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

1. At page 2, item B.(1)(a), after "case no. 06-O-14355" add "Supreme Court order no. S166639";
2. At page 2, item B.(1)(e), after "Case No. 09-O-13288", add "Supreme Court order no. S183009"; and
3. At page 4, item D.(1)(a)(i), delete the "X" in the box for "and until" std.1.4(c)(ii) condition.

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

5/11/11  
Date

  
RICHARD A. HONN  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 13, 2011, I deposited a true copy of the following document(s):

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

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

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

ROBERT FRANCIS GRAHAM  
629 3<sup>RD</sup> AVENUE SUITE I  
CHULA VISTA CA 91910

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:

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 13, 2011.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court