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<p>State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION</p>		<p>kwiktag[®] 018 036 285 </p>
<p>Counsel For The State Bar</p> <p>BRANDON K. TADY DEPUTY TRIAL COUNSEL THE STATE BAR OF CALIFORNIA 1149 South Hill Street Los Angeles, CA 90015</p> <p>Bar # 83045</p>	<p>Case Number(s): 09-O-13007, 09-O-19168, 10-O-04495, 11-O-11743(investigative matter)</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt;">FILED</p> <p style="text-align: center;">AUG 3 / 2011 </p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>CLARENCE MICHAEL BALINGIT 4403 Park Blvd. San Diego, CA 92116</p> <p>Bar # 194890</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of: CLARENCE MICHAEL BALINGIT</p> <p>Bar # 194890</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 18, 1998.
- (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 21 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: 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 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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. See Stipulation of Facts and Conclusions of Law.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Stipulation of Facts and Conclusions of Law.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. See Stipulation of Facts and Conclusions of Law.
- (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. See Stipulation of Facts and Conclusions of Law.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See Stipulation of Facts and Conclusions of Law.
- (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.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. See Stipulation of Facts and Conclusions of Law.

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- (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:

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of three (3) 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 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:

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.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions 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 5.162(A) & (E), 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:** Respondent may, but is not required to, attend Ethics School, CTA School, and/or he may take the MPRE before the effective date of the Supreme Court's Order in this matter. If Respondent attends Ethics School and passes the test at the conclusion of the class, if Respondent attends CTA School, and/or Respondent takes and passes the MPRE before the effective date of the Supreme Court's Order in this matter, then Respondent shall receive credit for complying with these probation conditions as if he satisfied them after the effective date of the Supreme Court's Order. In the Johnny Castillo matter, case number 11-O-11743, Respondent is required to immediately return Mr. Castillo's original file to him and in no event not later than 30 days after the Hearing Department approves this Stipulation.

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In the Matter of: CLARENCE MICHAEL BALINGIT	Case Number(s): 09-O-13007, 09-O-19168, 10-O-04495, AND 11-O-11743
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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
RICHARD SCIASCIA	\$1515.44	August 24, 2011
JOHNNY CASTILLO	\$1500.00	August 24, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 30 days from the date the Hearing Department approves this stipulation. On August 19, 2011, Respondent sent a check to attorney Gordon Levinson in the amount of \$1515.44 payable to Richard Sciascia. On August 19, 2011, Respondent sent a check in the amount of \$1500 to Johnny Castillo. Upon proof to the State Bar's Office of Probation that by August 24, 2011 Richard Sciascia received and cashed the check for \$1515.44 and that Johnny Castillo received and cashed the check for \$1500, Respondent will have fully satisfied the conditions of this section that he make restitution to Mr. Sciascia and to Mr. Castillo. If Respondent does not provide proof to the Office of Probation that Mr. Sciascia and Mr. Castillo received and cashed their respective checks by August 24, 2011, then Respondent is required to immediately comply with the restitution conditions contained in this section, and in no event not later than 30 days after the Hearing Department approves this stipulation, including payment of interest accruing from August 24, 2011.

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

(Effective January 1, 2011)

Financial Conditions

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

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

d. Client Trust Accounting School

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Clarence Michael Balingit
CASE NUMBER(S): 09-O-13007, 09-O-19168, 10-O-04495, 11-O-11743

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of the violations of the specified sections of the California Business and Professions Code and/or the California Rules of Professional Conduct.

Case No. 09-O-13007, (Complainant: Juan Ramirez)

FACTS (Case No. 09-O-13007):

1. In July 2008, Juan M. Ramirez ("Ramirez") hired Respondent to represent him in a misdemeanor case involving a certain traffic citation assessed against Ramirez. Ramirez paid Respondent at least \$1,800, as advanced attorney fees. Ramirez claims he paid Respondent an additional \$445, as advanced costs, for payment of the traffic fines. Respondent denies that Ramirez paid him any monies for payment of the traffic fines.
2. In September 2008, Respondent informed Ramirez that he obtained a reduction of the traffic fines and that Ramirez' misdemeanor matter was resolved. At that time Respondent knew or was grossly negligent in not knowing that he had not paid the traffic fines in full. Respondent denies telling Ramirez that he paid the traffic fines in full.
3. Respondent did not pay any portion of the traffic fines assessed against Ramirez. In or about October 2008, Ramirez received a court notice that the traffic fines were still due and outstanding. Thereafter, Ramirez repeatedly telephoned Respondent to inform him about the notice, and each time, Ramirez left a message asking Respondent for a callback to discuss the status of his case. Respondent did not return any of Ramirez's calls, and he did not otherwise respond to Ramirez's status inquiries.

4. In December 2008, Ramirez received a collection letter demanding payment of the traffic fines. Ramirez repeatedly telephoned Respondent about the collection letter, and each time, he left messages asking Respondent to call him back to discuss the status of his case. Respondent did not return any of the calls, and he did not otherwise respond to Ramirez's status inquiries. Ramirez also arranged to have email messages sent to Respondent informing him about the collection letter. Respondent replied to at least one email, stating that he would review the situation and get back to Ramirez about the matter.

5. To date, Respondent has not paid any portion of Ramirez's traffic fines.

6. At all times pertinent herein, the State Bar was conducting a disciplinary investigation concerning Respondent's conduct in Case no. 09-O-13007, which arose out of a complaint filed by Juan M. Ramirez.

7. The State Bar sent letters to Respondent requesting that Respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation. The State Bar mailed its letters on June 22, 2009, and on August 3, 2009.

8. Respondent received the State Bar letters dated and sent on June 22, 2009, and August 3, 2009, shortly after they were sent.

9. The State Bar gave Respondent a reasonable period of time to respond to its letters.

10. Respondent did not respond to the allegations under investigation as requested by the investigator.

11. Respondent did not raise any statutory or constitutional privilege in failing to cooperate and participate in the State Bar investigation.

CONCLUSIONS OF LAW (Case No. 09-O-13007):

12. . By not paying Ramirez's traffic fines, as he had been hired to do, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of California Rules of Professional Conduct, rule 3-110(A).

13. By not returning any of Ramirez's repeated telephone calls over a span of approximately three months from October 2008 to December 2008, inclusive, and by not otherwise responding to his status inquiries during that time, Respondent failed to respond promptly to reasonable status inquiries of

a client in a matter in which Respondent had agreed to provide legal services in wilful violation of California Business and Professions Code, section 6068(m).

14. By not responding to the State Bar's letters and by not otherwise responding to the allegations as requested by the investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of California Business and Professions Code, section 6068(i).

Case No. 09-O-019168 (Complainant: Richard Sciascia)

FACTS (Case No. 09-O-019168):

15. In January 2008, Richard S. Sciascia, Jr. ("Sciascia") hired Respondent and his law firm, Erwin and Balingit, to represent him in a personal injury matter arising out of an automobile accident where Sciascia was hit by an automobile while standing in a parking lot.

16. In August 2008, Respondent received on behalf of Sciascia certain insurance funds intended to pay for Sciascia's medical expenses ("med-pay funds") related to his injuries totaling approximately \$20,733. Respondent deposited the med-pay funds into his attorney client trust account at Vineyard Bank (now California Bank & Trust) account no. xxxxx534¹ ("CTA").

17. Between approximately September 2008 and October 2008, inclusive, Respondent disbursed payments totaling approximately \$3148 to Dr. Thomas Harris and to Coast Surgery Center.

18. Between approximately September 2008 and October 2008, inclusive, Sciascia received from Respondent a total amount of approximately \$12,809, which purportedly represented Sciascia's share of the med-pay funds. Sciascia received no additional funds from Respondent.

19. After approximately October 21, 2008, until the present time, Respondent should have maintained approximately \$4,776 of the med-pay funds in his CTA.

20. On October 24, 2008, the balance in Respondent's CTA was approximately \$258.

21. In February 2009, Sciascia hired attorney Gordon Levinson in place of Respondent.

22. On March 18, 2009, Respondent sent a check to attorney Levinson, Sciascia's new attorney, in the amount of \$3260.23 drawn on Respondent's CTA. This check represented a portion of Sciascia's

¹ The complete account number has been omitted due to privacy concerns.

med-pay funds that Respondent was required to hold in trust for Sciascia. Respondent still owed Sciascia \$1515.44 in med-pay funds that he was required to hold in trust.

23. On April 1, 2009, attorney Martin Greenbaum, acting on behalf of The Irvine Company, LLC, sent levy instructions to the San Diego County Sheriff to place a levy on all accounts in Respondent's name at Vineyard Bank. The Irvine Company, LLC had obtained a judgment against Respondent for unpaid rent Respondent owed for the office space he was renting for his law office. After receiving attorney Greenbaum's instructions, the San Diego County Sheriff levied on all of Respondent's bank accounts at Vineyard Bank including Respondent's CTA where Respondent had deposited Sciascia's med-pay funds.

24. On April 27, 2009, Respondent's check for \$3260.23 was returned for non-sufficient funds. Respondent did not learn about the levy on his CTA until after April 27, 2009.

25. On May 22, 2009, the San Diego County Sheriff's Department sent attorney Greenbaum a check in the amount of \$3295.06.

26. On May 28, 2009, after learning from Respondent that the San Diego County Sheriff's Department levied Respondent's CTA at Vineyard Bank, attorney Greenbaum sent a letter to the San Diego County Sheriff's Department instructing the Sheriff's Department to cancel and release the levy on Respondent's CTA. Attorney Greenbaum also sent a letter to Vineyard Bank instructing it to immediately release back to Respondent any monies held in Respondent's CTA which was levied pursuant to attorney Greenbaum's instructions.

27. On June 5, 2009, attorney Greenbaum sent a letter to Respondent enclosing the check from the Sheriff's Department in the amount of \$3295.06. Attorney Greenbaum endorsed the check making it payable to "Erwin and Balingit Client Trust Account."

28. From June 5, 2009, until July, 2011, a period of more than two years Respondent did not pay Sciascia the \$3260.23. In August, 2011, Respondent paid Sciascia \$3260.23. On August 19, 2011, Respondent paid Sciascia \$1515.44.

29. Between approximately October 2008, and December 2008, inclusive, Respondent repeatedly informed Sciascia that he had filed a lawsuit on his behalf. Respondent had not filed a lawsuit as of January 2009.

30. In January 2009, Sciascia began asking Respondent for a copy of Sciascia's lawsuit. Shortly thereafter, Respondent stopped communicating with Sciascia.

31. When Respondent represented to Sciascia that he had filed a lawsuit on his behalf, Respondent knew that he had not done so.

32. Respondent never filed a lawsuit on Sciascia's behalf.

33. Beginning in February 2009, until at least May 2009, Sciascia through attorney Levinson repeatedly requested all of Sciascia's client files and property, including videotapes and/or photographs of Sciascia's post-surgical recovery. These videotapes and/or photographs depicted Sciascia's injuries. Respondent did not release the videotapes and/or photographs to Sciascia or to attorney Levinson.

CONCLUSIONS OF LAW (Case No. 09-O-019168):

34. By not disbursing the balance of the med-pay funds to any of Sciascia's medical providers or to Sciascia after his employment was terminated, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive in wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

35. By having the balance in his CTA fall to approximately \$258 on and after October 24, 2008 when he should have maintained approximately \$4776 of the med-pay funds, Respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in wilful violation of Rules of professional Conduct, rule 4-100 (A).

36. By misappropriating at least \$4518 of client funds, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of California Business and Professions Code, section 6106.

37. By representing to Sciascia that he had filed a lawsuit on his behalf when he knew he had not done so, Respondent committed an act involving moral turpitude, dishonesty or corruption in wilful violation of California Business and Professions Code, section 6106.

38. By not releasing the videotapes and/or photos of Sciascia's post-surgery physical condition to Sciascia or to attorney Levinson, Respondent failed to release promptly, upon termination of

employment, to the client, at the request of the client, all the client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1)

39. By not filing a lawsuit on Sciascia's behalf, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Case No. 10-O-04495 (Complainant: Timothy Phillips)

FACTS (Case No. 10-O-04495):

40. In September 2007, Timothy E. Phillips hired Respondent on a contingency-fee basis to represent him in a bodily injury claim. Phillips sustained bodily injuries when a truck he was driving was hit by an automobile. The driver of that automobile may have been driving under the influence of alcohol and/or drugs when the collision occurred.

41. On December 5, 2008, Respondent filed a bodily injury lawsuit on behalf of Phillips in the San Diego County Superior Court, case no. 37-2008-00097400 CU-PA-CTL. This complaint included a prayer for punitive damages based on the allegation that the adverse driver was driving under the influence of alcohol and/or drugs.

42. On December 30, 2009, Respondent entered into a Stipulation with the attorney representing the adverse driver dismissing Phillips's prayer for punitive damages. Respondent did not inform Phillips of the Stipulation or obtain Phillips' permission before entering into the Stipulation.

43. On January 27, 2010, the court issued an order striking the prayer for punitive damages from Phillips' lawsuit. Respondent received notice of the order. Respondent did not inform Phillips about the order.

44. In January 2010, Phillips repeatedly tried to contact Respondent by telephone or in person to discuss his lawsuit; but, each time, Respondent was unavailable to talk or meet with Phillips. Respondent did not return any of Phillips' telephone calls or meet with Phillips.

45. In or about late January 2010, Phillips hired a new attorney, Daniel Klein, to represent him in the bodily injury lawsuit.

46. In or about January 2010 and February 2010, attorney Klein repeatedly telephoned and visited Respondent's office to request Phillips' file. On each call and visit, Respondent was unavailable,

and attorney Klein, or a person acting on his behalf, left a message asking Respondent for Phillips' client file. Respondent did not respond to attorney Klein's messages, and he did not release the client file to Klein or Phillips.

47. On or about February 26, 2010, an attorney service hired by attorney Klein visited Respondent at his home office, and asked for the client file. Respondent did not give the attorney service Phillips' client file.

48. To date, Respondent has not released the client file to Phillips or to attorney Klein.

49. At all times pertinent herein, the State Bar was conducting a disciplinary investigation concerning Respondent's conduct in Case no. 10-O-04495, which arose out of a complaint filed by Timothy E. Phillips.

50. The State Bar sent letters to Respondent requesting that Respondent cooperate and participate in the investigation of Phillips' complaint by providing a written response to the allegations under investigation. The State Bar mailed its letters to Respondent on June 15, 2010, and on July 12, 2010.

51. Respondent received the State Bar letters dated and sent on June 15, 2010, and July 12, 2010, shortly after they were sent.

52. The State Bar gave Respondent a reasonable period of time to respond to its letters.

53. Respondent did not respond to the allegations under investigation as requested by the investigator.

54. Respondent did not raise any statutory or constitutional privilege in failing to cooperate and participate in the State Bar investigation.

CONCLUSIONS OF LAW (Case No. 10-O-04495):

55. By not informing Phillips about the stipulation and Court's order striking the prayer for punitive damages, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of California Business and Professions Code, section 6068(m).

56. By not returning Phillips's and attorney Klein's telephone calls, by not being available to meet with Phillips and attorney Klein, and by not otherwise providing Phillips with any information about the status of his case, Respondent failed to respond promptly to reasonable status inquiries of a

client in a matter in which Respondent had agreed to provide legal services in wilful violation of California Business and Professions Code, section 6068(m).

57. By not releasing the client file despite repeated requests from Phillips and attorney Klein beginning in January 2010, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

58. By not responding to the State Bar's letters and by not otherwise responding to the allegations as requested by the investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of California Business and Professions Code, section 6068(i).

Case No. 11-O-11743, Investigative Matter, (Complainant: Johnny Castillo)

FACTS (Case No. 11-O-11743):

59. On February 22, 201, Johnny Castillo ("Castillo") hired Respondent and "Erwin and Balingit" to represent him in a Petition for Bankruptcy. Castillo paid Respondent \$1500 as an advanced attorney's fee and gave his original file to Respondent.

60. Respondent failed to perform any work on behalf of Castillo. Castillo called Respondent more than one time to ask about the status of the Petition in Bankruptcy and Castillo asked Respondent to return the file to him. Respondent did not return any of Castillo's telephone calls or return the file to him. By failing to perform any work on Castillo's case and by failing to respond to Castillo's status inquiries, Respondent constructively terminated his representation of Castillo.

61. From February, 2010 until August 18, 2011, Respondent failed to refund to Castillo the \$1500 advanced attorney's fee and failed to return to Castillo the original file.

62. On August 19, 2011, Respondent refunded to Castillo the \$1500 and promised Castillo to return Castillo's original file to him.

CONCLUSIONS OF LAW (Case No. 11-O-11743):

63. By not performing any work on Castillo's behalf, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

64. By not releasing the original file to Castillo, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

65. By not refunding the \$1500 in advanced attorney's fees to Castillo, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

66. By not returning Castillo's telephone calls, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in wilful violation of California Business and Professions Code, section 6068(m).

DISMISSALS.

67. 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-13007	Count One	Moral Turpitude (Misrepresentation)

CIRCUMSTANCES IN AGGRAVATION.

68. Respondent's misconduct evidences multiple acts of wrongdoing (Standard 1.2 (b) (ii)). Respondent committed misconduct in the Ramirez, Sciascia, Phillips, and Castillo client matters.

69. Respondent's misconduct involved a trust violation (Standard 1.2 (b) (iii)). Respondent failed to maintain \$4518 in trust for Sciascia's benefit.

70. Respondent's misconduct caused harm to Ramirez, Sciascia, Phillips, and Castillo (Standard 1.2 (b) (iv)). In the Ramirez matter, Respondent's failure to communicate with Ramirez and his failure to pay Ramirez's traffic fine caused Ramirez's traffic citation to be sent to collections. In the Sciascia matter, Respondent's failure to promptly pay Sciascia med-pay funds in the amount of \$4776 deprived Sciascia of the use of these funds. Respondent's failure to file a lawsuit on Sciascia's behalf and to promptly return Sciascia's file to him delayed the resolution of Sciascia's bodily injury claim. In the Phillips matter, Respondent's dismissal of the prayer for punitive damages in the Phillips' bodily injury complaint, without telling Phillips, reduced the potential value of Phillips' bodily injury claim. Respondent's failure to return Phillips' file to attorney Klein and his failure to respond to Phillips' and

attorney Klein's requests delayed the resolution of Phillips' bodily injury claim. In the Castillo investigation matter, Respondent's failure to perform any work on Castillo's matter, his failure to promptly return Castillo's advanced attorney's fee of \$1500, and his failure to promptly return Castillo's file caused harm to Castillo.

CIRCUMSTANCES IN MITIGATION.

71. On May 18, 1998, Respondent was admitted to practice law in California and he does not have any prior record of State Bar discipline (Standard 1.2 (e) (i)).

72. Respondent cooperated with the State Bar in these disciplinary proceedings by admitting culpability for the misconduct alleged in Counts Four, Twelve, Thirteen, and Fourteen contained in the Notice of Disciplinary Charges (Standard 1.2 (e) v)).

73. Respondent was prepared to call good character witnesses on his behalf if this matter proceeded to trial (Standard 1.2 (e) (vi)).

AUTHORITIES SUPPORTING DISCIPLINE.

74. Standard 1.3 provides that the purposes of sanctions of professional misconduct are 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.

75. Standard 1.6 provides that where a member is found culpable of two or more acts of professional misconduct and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

76. Standard 2.2 (a) provides that culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than one year actual suspension, irrespective of mitigating circumstances.

77. Standard 2.4 (a) provides that culpability of a member of willfully failing to perform legal services in an individual matter or matters 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 on the extent of the misconduct and the degree of harm to the client,

78. Standard 2.6 provides that culpability of a member of violation B&P Code, section 6068 shall result in disbarment or suspension depending on the gravity of the offense or harm, if any, to the victim with due regard to the purposes of imposing discipline set forth in Standard 1.3.

79. The discipline of two years actual suspension with the requirement of a Standard 1.4 (c) (ii) hearing, three years stayed suspension, and three year probation with conditions is an appropriate level of discipline consistent with the Standards. Respondent's check for \$3260.23 was returned for non-sufficient funds because Vineyard Bank improperly levied Respondent's CTA. However, Respondent was grossly negligent in his failure to timely deposit the San Diego County Sheriff's Department's check from attorney Greenbaum into Respondent's CTA, obtain a replacement check if he could not deposit the Sheriff's Department's check, or send the check to Sciascia. Respondent was grossly negligent in failing to timely pay \$1515.44, the balance of the med-pay funds to Sciascia.

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

The parties waive any variance between the Notice of Disciplinary Charges filed on February 1, 2011 and the facts contained in this Stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the Notice of Disciplinary Charges.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A (7), was August 23, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 19, 2011, the prosecution costs in this matter are \$8875.30. 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: CLARENCE MICHAEL BALINGIT	Case number(s): 09-O-13007, 09-O-19168, 10-O-04495, 11-O-11743
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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.

8/23/2011 C. M. Balingit Clarence Michael Balingit
Date Respondent's Signature Print Name

8/24/2011 Brandon K. Tady Brandon K. Tady
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: CLARENCE MICHAEL BALINGIT	Case Number(s): 09-O-13007, 09-O-19168, 10-O-04495, 11-O-11743
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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.

PAGE 4 - SECTION D. (3)(a)(ii) - REMOVE CHECK MARK FROM BOX.

PAGE 7 - FINANCIAL CONDITIONS (A) DELETE ENTIRE SECTION. REPAYMENT HAS PAID RESTITUTION TO RICHARD SCIARCIA AND JOHANNY CASTILLO.

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.)**

08-30-11
Date



RICHARD A. PLATEL
 Judge of the State Bar Court
RICHARD A. PLATEL

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 August 31, 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:

CLARENCE M BALINGIT
LAW OFC RICHARD HIGGINS
4403 PARK BLVD
SAN DIEGO CA 92116

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

BRANDON TADY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 31, 2011.



Angela Carpenter
Case Administrator
State Bar Court