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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  Rizamari C. Sitton The State Bar of California Office of the Chief Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1364  Bar # 138319	Case Number(s): 09-O-17685 10-O-02447 10-O-01253 10-O-05956 10-O-07145 10-O-07575 10-O-09666 10-O-10780 10-O-11192 11-O-11826	For Court use only  <div style="text-align: center;"> <b>PUBLIC MATTER</b>   <b>FILED</b>             JUN 21 2011             STATE BAR COURT            CLERK'S OFFICE            LOS ANGELES         </div>
In Pro Per Respondent  James P. McHenry 4630 Campus Drive Newport Beach, California 92660 (949) 646-6100  Bar # 179515	Submitted to:  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: James Patrick McHenry  Bar # 179515  A Member of the State Bar of California (Respondent)		

**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 6, 1995.
- (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.



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 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
  - (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.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's clients were seriously harmed by the misconduct described herein. The clients hired Respondent to assist them when they were financially distressed. For example, clients Jerry &

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Jacqueline Warren, and Jeffrey & Kristin Godley, lost the use of the money they had paid for services that were not performed.

- (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:**

Although the misconduct described herein is serious, Respondent has no prior record of discipline over fifteen (15) years of law practice in California.

**D. Discipline:**

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

- (2)  **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(Effective January 1, 2011)

Actual Suspension

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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: \_\_\_\_\_
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

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

(Effective January 1, 2011)

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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:

- (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:**

(a) Within three (3) months of the effective date of the discipline herein, Respondent must initiate a binding fee arbitration with any duly-authorized fee dispute arbitration service regarding any and all fee disputes involving each of the following clients. If the client's consent is required for the arbitration to be binding, and the client does not consent, Respondent shall proceed with a non-binding arbitration. Any mutual settlement agreement between client and Respondent would alleviate Respondent of his obligation to initiate and submit to arbitration under these conditions.

- i. Alicia Maisincho & Jose Proano;
- ii. Debra Keena
- iii. Jennifer Flores
- iv. Janet Shaw
- v. Jeff Siragusa

(b) Within three (3) months of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof that he had initiated each of the fee arbitration matters listed in paragraph (5)(a) above.

(c) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of the completion of each of the fee arbitration matters listed in paragraph (5)(a) above.

(d) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof that he had fully complied with the findings and rulings in each of the fee arbitration matters listed in paragraph (5)(a) above.

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Attachment language (if any):

Financial Conditions, pages 8-9.  
Statement of Facts, pages 10-15.  
Conclusions of Law, pages 16-19.  
Supporting Authority, page 20.

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In the Matter of: James Patrick McHenry	Case Number(s): 09-O-17685, et al.
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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
Jerry & Jacqueline Warren	\$ 2,499.00	July 23, 2009
Jeffrey & Kristin Godley	\$ 3,200.00	October 27, 2009

- 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:
- 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.

**STATEMENT OF FACTS**

IN THE MATTER OF:        JAMES P. McHENRY

CASE NUMBERS:            09-O-17685, 10-O-02447, 10-O-01253  
                                  10-O-05956, 10-O-07145, 10-O-07575  
                                  10-O-09666, 10-O-10780, 10-O-11192  
                                  11-O-11826

**Case No. 09-O-17685 (Client Alicia Maisincho)**

1. In March 2009, Alicia Maisincho (“Maisincho”) hired Respondent to obtain a mortgage loan modification on her behalf. Maisincho paid Respondent approximately \$2,950 as advanced attorney’s fees.

2. On June 3, 2009, Maisincho terminated Respondent’s employment and requested a refund of unearned fees.

3. Respondent did not provide to Maisincho any accounting of the attorney fees she had advanced.

4. A dispute arose between Respondent and Maisincho about whether Respondent earned all the fees she had advanced.

**Case No. 10-O-02447 (Client Debra Keena)**

5. In May 2009, a real estate agent Michael Hale (“Hale”) referred Debra A. Keena (“Keena”) to Respondent for legal services.

6. On May 12, 2009, as a result of the referral, Keena hired Respondent to obtain a mortgage loan modification for her. Keena paid Respondent approximately \$2950 as advanced attorney fees.

7. On January 11, 2010, Respondent submitted a loan modification application on behalf of Keena to her lender.

8. On January 25, 2010, the lender denied Keena’s loan modification application.

9. Respondent paid Hale a certain fee for having referred Keena to him for legal services.

10. Respondent did not provide to Keena any accounting of the attorney fees she had advanced.

11. A dispute arose between Respondent and Keena about whether Respondent earned the fees she had advanced.

**Case No. 10-O-01253 (Client Jennifer Flores)**

12. In August 2009, a real estate mortgage broker, Wendy Kelly ("Kelly") referred Jennifer Flores ("Flores") to Respondent for legal services. As a result of the referral, Flores hired Respondent to obtain a modification of a mortgage loan on her residential property in Corona, California. Flores paid Respondent \$3,100 as advanced attorney fees.

13. Respondent paid Kelly a certain fee for having referred Flores to him for legal services.

14. In December 2009, Flores's application for a loan modification was denied. Respondent's employment was terminated.

15. Respondent did not provide to Flores any accounting of the attorney fees she had advanced.

16. A dispute arose between Respondent and Flores about whether Respondent earned the fees she had advanced.

**Case No. 10-O-05956 (Client Todd L. Cregar)**

17. In July 2009, Todd L. Cregar ("Cregar") hired Respondent to apply for and obtain a modification of a mortgage loan on his residential property. Cregar paid Respondent \$3,000 as advanced attorney fees.

18. In December 2009, Cregar terminated Respondent's services, and requested a refund of unearned fees.

19. Between February 2010 and March 2010, inclusive, Respondent and Cregar negotiated an agreement regarding a refund. During the negotiations, Respondent stated to Cregar, "if you proceed with any complaint or any action against me or my company, then I will immediately rescind my offer to refund your money in full."

20. After settlement of a small claims action, Respondent refunded \$2,000 to Cregar.

**Case No. 10-O-07145 (Client Steven M. Cartmill)**

21. In June 2009, a real estate agent, Michael Hale ("Hale") referred Steven M. Cartmill ("Cartmill") to Respondent for legal services.

22. On June 25, 2009, as a result of the referral, Cartmill hired Respondent to apply for and obtain a modification of a mortgage loan on his residential property.

23. On July 14, 2009, Cartmill paid Respondent \$3,200, as advanced attorney fees.

24. Respondent paid Hale a certain fee for having referred Cartmill to him for legal services.

25. In early December 2009, Cartmill terminated Respondent's services and requested a refund of unearned fees. Respondent agreed to refund \$2,500.

26. On February 1, 2010, Respondent made a partial refund of \$1,000 to Cartmill.

27. On April 4, 2011, Respondent refunded to Cartmill the balance of the unearned fees in the amount of \$1,500.

**Case No. 10-O-07575 (Client Janet Shaw)**

28. In September 2009, a real estate agent, Michael Hale ("Hale") referred Janet Shaw ("Shaw") to Respondent for legal services.

29. In September 2009, as a result of the referral, Shaw hired Respondent to apply for and obtain a modification of a mortgage loan on her residential property. Shaw paid Respondent \$3,250 as advanced attorney fees.

30. Respondent paid Hale a certain fee for having referred Shaw to him for legal services.

31. In December 2009, Shaw's application for a loan modification was denied.

Respondent's employment terminated.

32. Respondent did not provide to Shaw any accounting of the attorney fees she had advanced.

33. A dispute arose between Respondent and Shaw about whether Respondent earned the fees she had advanced.

**Case No. 10-O-09666 (Client Jerry Warren)**

34. On July 23, 2009, Jerry Warren and Jacqueline Warren (collectively "Warrens") hired Respondent to apply for and obtain a modification of a mortgage loan on their residential property. Respondent agreed to perform services involving the Warrens's property located in Minnesota. At all times pertinent, the Warrens were permanent residents of Minnesota.

35. On July 23, 2009, pursuant to their attorney-client agreement, the Warrens paid Respondent \$2,499 as advanced attorney fees.

36. Respondent is not, and never has been, licensed to practice law in Minnesota.

**Case No. 10-O-10780 (Client Kristin Godley)**

37. On October 27, 2009, Jeffrey Godley and Kristen Godley (collectively "Godleys") hired Respondent to apply for, negotiate and obtain a modification of a mortgage loan on their residential property. Respondent agreed to perform services involving the Godleys's property located in Pennsylvania. At all times pertinent, the Godleys were permanent residents of Pennsylvania.

38. On October 27, 2009, the Godleys paid Respondent \$3,000 as advanced attorney fees.

39. Respondent is not, and never has been, licensed to practice law in Pennsylvania.

40. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for the Godleys, prior to demanding, charging, collecting or receiving any fees.

**Case No. 10-O-11192 (Client Patrick Coyle)**

41. In January 2010, Patrick Coyle ("Coyle") hired Respondent to apply for, negotiate and obtain a modification of a mortgage loan on his residential property. Respondent agreed to perform services involving Coyle's property located in Arizona. At all times pertinent, Coyle was a permanent resident of Arizona.

42. In January 2010, Coyle paid Respondent \$1,900 as advanced attorney fees.

43. Respondent is not, and never has been, licensed to practice law in Arizona.

44. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Coyle, prior to demanding, charging, collecting or receiving any fees.

45. In December 2010, Respondent's employment terminated.

46. In December 2010, Respondent and Coyle negotiated and entered into an agreement whereby Respondent would refund \$1,900 to Coyle. Respondent prepared a written agreement ("Agreement") which he asked Coyle to execute prior to issuing the refund. The agreement contained the following provision: "Client further agrees to waive, release, and rescind any complaint to or with the State Bar of California with regard to Attorney [James McHenry] in any manner whatsoever. Client further agrees not to cooperate with the State Bar of California with regard to any investigation of Attorney [James McHenry]."

47. Coyle and Respondent executed the Agreement on December 14, 2010. Respondent refunded \$1,900 to Coyle in late December 2010.

**Case No. 11-O-11826 (Client Jeff Siragusa)**

48. In October 2009, Jeff Siragusa ("Siragusa") hired Respondent to apply for, negotiate and obtain a modification of a mortgage loan on his residential property in California.

49. In October 2009, Siragusa paid Respondent \$3,000 as advanced attorney fees.

50. Respondent did not provide to Siragusa any accounting of the attorney fees he had advanced.

51. A dispute arose between Respondent and Siragusa about whether Respondent earned the fees he had advanced.

## CONCLUSIONS OF LAW

IN THE MATTER OF:        JAMES PATRICK McHENRY

CASE NUMBERS:            09-O-17685, 10-O-02447, 10-O-01253  
                                  10-O-05956, 10-O-07145, 10-O-07575  
                                  10-O-09666, 10-O-10780, 10-O-11192  
                                  11-O-11826

### **Case no. 09-O-17685 (Complainant Alicia Maisincho)**

1. By not providing any accounting to Maisincho of the attorney fees she had advanced, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

### **Case no. 10-O-02447 (Complainant Debra Keena)**

2. By paying Hale a monetary reward for having referred Keena to him for legal services, Respondent compensated, gave, and promised something of value to a person or entity for the purpose of recommending or securing employment of Respondent or Respondent's law firm by a client or as a reward for having made a recommendation resulting in employment of Respondent or Respondent's law firm, in willful violation of Rules of Professional Conduct, rule 1-320(B).

3. By not providing any accounting to Keena of the attorney fees she had advanced, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

### **Case No. 10-O-09666 (Complainant Jerry Warren)**

4. By entering into a contract with the Warrens in Minnesota to apply, negotiate and obtain a modification of their loan on a property in Minnesota when Respondent was not admitted in nor otherwise authorized to practice law in that state, Respondent practiced law in a jurisdiction where to do so is a violation of the regulations of the profession in that jurisdiction, in willful violation of Rules of Professional Conduct, rule 1-300(B).

**Case No. 10-O-01253 (Complainant Jennifer Flores)**

5. By paying Kelly a monetary reward for having referred Flores to him for legal services, Respondent compensated, gave, and promised something of value to a person or entity for the purpose of recommending or securing employment of Respondent or Respondent's law firm by a client or as a reward for having made a recommendation resulting in employment of Respondent or Respondent's law firm, in willful violation of Rules of Professional Conduct, rule 1-320(B).

6. By not providing Flores with an accounting of the attorney fees she had advanced, Respondent failed to render appropriate accounts to the client regarding all funds of a client coming into the possession of the attorney or his law firm, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

**Case No. 10-O-05956 (Complainant Todd L. Cregar)**

7. By asserting to Cregar: "if you proceed with any complaint or any action against me or my company, then I will immediately rescind my offer to refund your money in full", during negotiations of a fee dispute, Respondent acted as a party or as an attorney for a party and agreed or sought agreement that professional misconduct or the terms of a settlement of a claim for professional misconduct would not be reported to the disciplinary agency, in willful violation of Business and Professions Code, section 6090.5.

**Case No. 10-O-07145 (Complainant Steven M. Cartmill)**

8. By paying Hale a monetary reward for having referred Cartmill to him for legal services, Respondent compensated, gave, and promised something of value to a person or entity for the purpose of recommending or securing employment of Respondent or Respondent's law firm by a client or as a reward for having made a recommendation resulting in employment of Respondent or Respondent's law firm, in willful violation of Rules of Professional Conduct, rule 1-320(B).

**Case No. 10-O-07575 (Complainant Janet Shaw)**

9. By not providing Shaw with an accounting of the attorney fees she paid to him, Respondent failed to render appropriate accounts to the client regarding all funds of a client coming into the possession of the attorney or his law firm, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

10. By paying Hale a monetary reward for having referred Shaw to him for legal services, Respondent compensated, gave, and promised something of value to a person or entity for the purpose of recommending or securing employment of Respondent or Respondent's law firm by a client or as a reward for having made a recommendation resulting in employment of Respondent or Respondent's law firm, in willful violation of Rules of Professional Conduct, rule 1-320(B).

**Case No. 10-O-10780 (Complainant Kristin Godley)**

11. By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from the Godleys prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated Business and Professions Code section 6106.3.

12. By entering into a contract with the Godleys in Pennsylvania to apply, negotiate and obtain a modification of their loan on a property in Pennsylvania when Respondent was not admitted in nor otherwise authorized to practice law in that state, Respondent practiced law in a jurisdiction where to do so is a violation of the regulations of the profession in that jurisdiction, in willful violation of Rules of Professional Conduct, rule 1-300(B).

**Case No. 10-O-11192 (Complainant Patrick Coyle)**

13. By entering into a contract with Coyle in Arizona to apply, negotiate and obtain a modification of their loan on a property in Arizona when Respondent was not admitted in nor otherwise authorized to practice law in that state, Respondent practiced law in a jurisdiction

where to do so is a violation of the regulations of the profession in that jurisdiction, in willful violation of Rules of Professional Conduct, rule 1-300(B).

14. By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from Coyle prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated Business and Professions Code section 6106.3.

15. By including in their refund agreement: "Client further agrees to waive, release, and rescind any complaint to or with the State Bar of California with regard to Attorney [James McHenry] in any manner whatsoever. Client further agrees not to cooperate with the State Bar of California with regard to any investigation of Attorney [James McHenry]", Respondent acted as a party or as an attorney for a party and agreed or sought agreement that Coyle would withdraw a disciplinary complaint or would not cooperate with the investigation or prosecution conducted by the disciplinary agency, in willful violation of Rules of Professional Conduct, rule 6090.5(a)(2).

**Case no. 11-O-11826 (Client Jeff Siragusa)**

16. By not providing any accounting to Siragusa of the attorney fees he had advanced, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

## SUPPORTING AUTHORITIES

IN THE MATTER OF:        JAMES PATRICK McHENRY

CASE NUMBERS:            09-O-17685, 10-O-02447, 10-O-01253  
                                  10-O-05956, 10-O-07145, 10-O-07575  
                                  10-O-09666, 10-O-10780, 10-O-11192  
                                  11-O-11826

In *In re Ronald Robert Silverton* (2005) 36 Cal.4<sup>th</sup> 81, the California Supreme Court discussed the fact that the Standards for Attorney Sanctions for Professional Misconduct are entitled to great weight and the State Bar Court should follow their guidance whenever possible.

Standard 1.3 provides that the primary purposes of attorney discipline are, “the protection of the public, the courts and the legal professions; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession.”

Standard 1.6(a) states that where two or more acts of professional misconduct are charged and different sanctions are prescribed by the standards for the acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

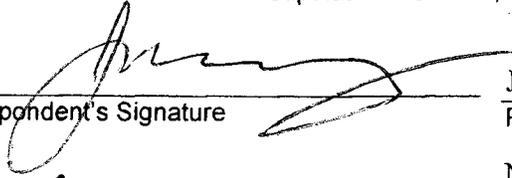
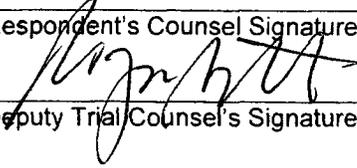
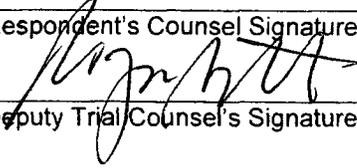
Standard 2.2(b) provides, “Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

(Do not write above this line.)

In the Matter of: James Patrick McHenry	Case number(s): 09-O-17685, et al.
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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>June 10, 2011</u> Date	 Respondent's Signature	<u>James Patrick McHenry</u> Print Name
<u>6/14/2011</u> Date	 Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>6/14/2011</u> Date	 Deputy Trial Counsel's Signature	<u>Rizamari C. Sitton</u> Print Name

(Do not write above this line.)

In the Matter of:  
James Patrick McHenry

Case Number(s):  
09-O-17685, et al.

### 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.

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.)**

Date

6/20/11



Judge of the State Bar Court

**DONALD F. MILES**

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**DECLARATION OF SERVICE BY REGULAR MAIL**

**CASE NUMBER: 09-0-17685; 10-O-02447; 10-O-01253; 10-O-05956; 10-O-07145; 10-O-07575; 10-O-09666; 10-O-10780; 10-O-11192; 11-O-11826**

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION**

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

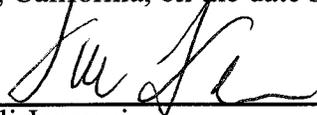
**James P. McHenry  
4630 Campus Drive  
Newport Beach, CA 92660**

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

**STATE BAR COURT – HEARING DEPARTMENT – LOS ANGELES**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 15, 2011

Signed:   
\_\_\_\_\_  
Juli Jenewein  
Declarant

**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 June 21, 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:

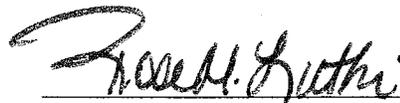
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES P. MCHENRY, ESQ.  
JAMES MCHENRY, ATTORNEY-AT-LAW  
4630 CAMPUS DR  
NEWPORT BEACH, CA 92660

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

RIZAMARI SITTON, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 21, 2011.



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Rose Luthi  
Case Administrator  
State Bar Court