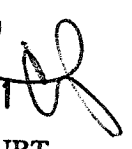



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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Mia Ellis Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015</p> <p>Bar # 228235</p>	<p>Case Number(s): 09-O-19074, 10-O-07064, 10-O-08649, 10-O-03281, 10-O-05114</p> <p style="text-align: center;">PUBLIC MATTER</p>	<p>For Court use only</p> <p style="text-align: center;">FILED AUG 11 2011 </p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>kwiktag® 018 037 638 </p>
<p>In Pro Per Respondent</p> <p>Kim T. Nguyen Law Office of Kim T. Nguyen 2913 El Camino Real #738 Tustin, CA 92782</p> <p>Bar # 162783</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Kim T. Nguyen</p> <p>Bar # 162783</p> <p>A Member of the State Bar of California (Respondent)</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 December 14, 1992.
- (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 17 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: for the three billing cycles following the effective date of the Supreme Court order. (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 02-O-10917
 - (b) Date prior discipline effective August 23, 2002
 - (c) Rules of Professional Conduct/ State Bar Act violations: 6103, 6068(m)
 - (d) Degree of prior discipline one year public reproof
 - (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. Clients deprived of the use of funds
- (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.
- (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. Respondent has been cooperative in stipulating the facts, conclusions of law and discipline.
- (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.
- (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 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 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 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.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

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

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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- 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:**

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In the Matter of: Kim T. Nguyen	Case Number(s): 09-O-19074, 10-O-07064, 10-O-08649, 10-O-03281, 10-O-05114
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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
Brian Nicholson	\$2,700	January 13, 2011
Hugo Villatoro	\$7,750	October 26, 2009

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than sixty (60) days after the effective date of the discipline herein.

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";

- 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.

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In the Matter of: Kim T. Nguyen	Case Number(s): 09-O-19074, 10-O-07064, 10-O-08649, 10-O-03281, 10-O-05114
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Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for three year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

Within the first ninety days of the probation period, Respondent must develop a law school office management/organization plan, which must be approved by the Office of Probation. This plan must include procedure to 1) send periodic report to clients; 2) document telephone messages received and sent; 3) maintain files; 4) meet deadlines; 5) withdraw as attorney, whether of record or not when clients cannot be contacted or located; 6) train and supervise support personnel; and 7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.

Within the first year of the probation period, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 12 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. Respondent will receive MCLE credit for attending these courses.

promptly to reasonable status inquiries of a client in violation of Business and Professions Code Section 6068(m).

By asserting to Saffer that he had filed his complaint, when he either knew that the statement was false or was grossly negligent in not knowing that it was false, Respondent committed an act of moral turpitude, dishonesty or corruption in violation of Business and Professions code section 6106.

By not providing Saffer an accounting for the \$3000 advanced fee, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3).

By not providing Saffer a refund of the \$3000 advanced fee, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2).

By not paying the judgment nor appearing in court in May 28, 2009, Respondent wilfully disobeyed or violated an order of the court requiring in violation of Business and Professions Code section 6103.

Case No. 10-O-07064 (Complainant: Patricia Collins)

FACTS:

1. On January 9, 2010, Patricia Collins employed Respondent to represent her in a civil dispute with her homeowners' association. Collins paid Respondent an initial advanced fee of \$300 toward an advanced fee of \$2,500. Collins paid an additional installment of \$600. Collins also paid Respondent \$125 for advanced costs.
2. On February 16, 2010, Collins advised Respondent that she wanted her civil complaint filed against the homeowners' association by the end of that week.
3. On March 7, 2010, Respondent asserted that the case was going to be filed on March 9, 2010.
4. From March 8, 2010, until March 16, 2010, Collins repeatedly called and emailed Respondent to inquire about the status of their case.
5. Respondent never filed Collins's civil complaint.
6. On April 14, 2010, Collins mailed Respondent a letter, which he received, terminating his employment, and demanding an accounting of her advanced fee and a refund of unearned advanced fees.
7. On August 16, 2010, and on August 31, 2010, a State Bar investigator mailed letters to Respondent, which he received. Respondent did not respond to the letters.

CONCLUSIONS OF LAW:

By not filing Collins's complaint nor advising her of her other options, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

By not responding to Collins's voicemails or emails between on or about March 8, 2010, and on or about March 16, 2010, Respondent failed to respond promptly to reasonable status inquiries of a client in violation of Business and Professions Code, section 6068(m)..

By not providing Collins an accounting for her advanced fee, Respondent failed to render appropriate

accounts to a client regarding all funds coming into Respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3).

By not responding to the State Bar 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 violation of Business and Professions Code section 6068(i).

Case No. 10-O-08649 (Complainant: Brian Nicholson)

FACTS:

1. Brian Nicholson employed Respondent to represent him in a wrongful termination and civil rights action against his former employer, Federal Express ("Fedex")¹. Respondent was paid an advanced fee of \$3,500.
2. On December 9, 2008, Respondent associated into the civil case previously commenced with the filing of a complaint in the U.S. District Court for the Central District of California, Case No. 2:09-cv-00761-MMM-VBK, entitled *Brian A. Nicholson v. Federal Express Corporation, et al.*
3. On August 3, 2009, the court scheduled a telephonic status conference for January 6, 2010, to be initiated by Respondent, and ordered the parties to conduct a mediation of their dispute, to be completed by March 29, 2010. Respondent was present at the hearing on or about August 3, 2009, and received notice of the January 6, 2010 hearing and of the mediation completion date. On or about January 6, 2010, Respondent failed to initiate and appear for the telephonic status conference.
4. On January 20, 2010, Fedex sent an email to Respondent and to Alan Ross, whom the parties had chosen as their mediator, confirming that the mediation would take place on January 22, 2010. Also on or about January 20, 2010, Respondent confirmed the January 22, 2010 mediation date.
5. On January 21, 2010, Respondent sent an email to Fedex and to Ross informing them that Nicholson had "decided not to participate" in the January 22, 2010, mediation.
6. On January 22, 27, and 28, and on or about February 8 and 24 (all in 2010), Fedex sent emails to Respondent, which he received, and left voicemail messages with Respondent, which he received, requesting that Respondent provide alternative mediation dates. Respondent did not reply.
7. On March 15, 2010, Fedex filed a motion for summary judgment and served a copy on Respondent, who received it. Respondent did not file an opposition to Fedex's motion.
8. On March 31, 2010, Respondent filed with the court an ex parte application requesting the court to continue the mediation completion date to April 16, 2010. On April 2, 2010, the court issued an order granting Respondent's ex parte request, in which the court noted that "this is not the first time [Respondent] has failed to abide by the court's directives without explanation. The court informs [Respondent] that no further extensions will be granted and failure to abide by the court's directives ... may result in dismissal with prejudice without further notice[.]"
9. On April 7, 2010, Respondent sent an email to Fedex offering to schedule the mediation anytime between April 14 and April 16, 2010. Fedex responded with a voicemail message to Respondent, which he received, confirming that Fedex was available to attend the mediation on April 14, 2010. Respondent did not reply to the message. On April 12, 2010, Fedex sent Respondent an email, which he received, telling Respondent that he had not confirmed whether he was still available on April 14, 2010.
10. On April 13, 2010, Nicholson traveled to California from Florida (where he had gone to tend to his mother following her surgery) and called Respondent immediately upon his arrival, to find out when and where the mediation was taking place. Respondent was unavailable, so Nicholson left him a

¹ For purposes of this stipulation, references to "Fedex" refers to Federal Express and its attorneys.

voicemail message asking Respondent to return his call and provide him the information.

Respondent received Nicholson's message but did not return it.

11. On April 13, 2010, Fedex filed a status report to court informing the court that Respondent had failed to timely file an opposition to Fedex's summary judgment motion, and that Respondent was not complying with the court's April 2 order extending the mediation completion date.
12. On April 14, 2010, Nicholson called Respondent, who was again unavailable, and again left a message asking Respondent to return his call and advised him as to when and where the mediation was to take place. Again, Respondent received the message but did not return Nicholson's call.
13. On April 15, 2010, Respondent emailed Fedex with the message: "My client just came into town. We want to mediate. You just tell me when. Thanks." Also on April 15, 2010, Fedex sent Respondent an email advising him that, given Respondent's failure up to that point to respond to Fedex's inquiries about a mediator and date, Respondent would have to select both and advise Fedex of the same, and that Fedex would appear. Respondent, in turn, sent Fedex an email that same date proposing that the mediation be conducted over the weekend. Fedex replied, also by email that same date, advising Respondent that the mediation was ordered completed by Friday, April 16, 2010. The mediation did not take place. Respondent did not communicate with Nicholson on April 15, 2010 concerning the mediation.
14. On April 20, 2010, the court ordered Nicholson's case dismissed with prejudice, due to Respondent's failure to follow the court's orders and for failure to file an opposition to Fedex's motion for summary judgment.
15. On May 10, 2010, Nicholson terminated Respondent's employment.
16. On January 13, 2011, Nicholson sent Respondent an email, which Respondent received, demanding an accounting and a refund of unearned advanced fees. Respondent did not respond.
17. On October 28, 2010, and November 22, 2010, a State Bar investigator mailed letters to Respondent, which he received, requesting that Respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation.
18. Respondent has refunded \$800 to Nicholson.

CONCLUSIONS OF LAW:

By not appearing at the telephonic status conference on January 6, 2010; by not responding to the email and voicemail messages from Fedex, sent on January 22, 27, and 28, 2010, and on February 8 and 24, 2010, seeking an alternate mediation date; by not filing an opposition to Fedex's motion for summary judgment; by not responding to Fedex's message on August 12, 2010 seeking confirmation that Respondent was still committed to a mediation on August 14, 2010; and by not responding to Nicholson's calls on August 13 and 14, 2010, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

By failing to cooperate in the scheduling of the mediation until it was no longer practical to do so by the court's mediation completion date, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in violation of Business and Professions Code section 6103.

By not rendering to Nicholson, at the time of Respondent's termination, an appropriate account to Nicholson regarding his \$3,500 advanced fee, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in violation of Rules of Professional Conduct, rule 4-100(B)(3)

By not providing Nicholson a complete refund of the \$3,500 unearned advanced fee, Respondent failed

to refund promptly any part of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2).

By not responding to the State Bar 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 violation of Business and Professions Code section 6068(i).

Case No. 10-O-03281 (Complainant: Hugo Villatoro)

FACTS:

1. On August 1, 2009, Mr. Villatoro employed Respondent to represent him in home foreclosure matter.
2. Mr. Villatoro paid a total of 8,250 for Respondent's services.
3. On August 1, 2009, Respondent filed an authorization form with Mr. Villatoro's lender, American Servicing Company. This is the only document that Respondent filed with the lender on Mr. Villatoro's behalf.
4. On October 15, 2009, Mr. Villatoro called Respondent to learn the status of the case.
5. Mr. Villatoro received a refund check from Respondent in the amount of \$3,000.00.
6. Mr. Villatoro then sent Respondent a letter demanding a refund of the remainder of the fees.
7. On July 7, 2010, and November 22, 2010, the State Bar sent a letter to Respondent requesting a response to the allegations and supporting documents. Although Respondent received the State Bar's letter, he did not respond.

CONCLUSIONS OF LAW:

By failing to file documents related to the foreclosure case, Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A).

By not providing Villatoro a complete refund of the \$8,250 of unearned advanced fee, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct, rule 3-700(D)(2).

By not responding to the State Bar 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 violation of Business and Professions Code section 6068(i).

Case No. 10-O-05114 (Complainant: Charity Scroggins)

FACTS:

1. In August 2007, Charity Scroggins employed Respondent to represent her in a civil matter.
2. In February 2010 the civil matter settled for \$8,250.00.
3. On February 12, 2010, Respondent deposited the settlement check into his client trust account.
4. Respondent informed Ms. Scroggins that her portion of the settlement proceeds would be \$5,362.50.
5. On March 1, 2010, Respondent informed Ms. Scroggins that he would deposit \$5,362.50 into her account the next day. On March 2, 2010, Respondent deposited a check for \$5,362.50 into Ms. Scroggins bank account.

6. On March 5, 2010, Ms. Scroggins was informed that her bank account was frozen because Respondent's \$5,362.50 check was returned for insufficient funds.
7. From February 12, 2010 through October 2010, the balance in Respondent's account dipped multiple times below the required amount to be maintained, with the lowest balance of \$23.05 occurring on May 28, 2010.
8. Respondent had misappropriated \$5,339.45 of funds that he held on behalf of Ms. Scroggins.
9. On January 27, 2011, Respondent deposited Ms. Scroggins' portion of the settlement proceeds, \$5,500 into her account.
10. On June 7, 2010, the State Bar sent a letter to Respondent requesting a response and supporting documentation. Although Respondent received the State Bar's letter, he did not respond. Then, on January 6, 2010, the State Bar sent a further letter to Respondent again requesting a response. Although Respondent received the State Bar's letter, he did not respond.

CONCLUSIONS OF LAW:

By not maintaining funds belonging to Scroggin in his CTA, 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 violation of Rules of Professional Conduct, rule 4-100(A).

By misappropriating funds received on behalf of a client, Respondent committed an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

By not responding to the State Bar 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 violation of Business and Professions Code section 6068(i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was August 3, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

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

Standard 1.7(a) provides that where, as here, a member has a prior imposition of discipline, the degree of discipline imposed in the prior proceeding shall be greater.

Standard 2.2(a) 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 a one-year actual suspension, irrespective of mitigating circumstances.

Standard 2.2(b) provides that a member's violation of rule 4-100, which does not result in wilful misappropriation of entrusted funds or property, shall result in at least three months actual suspension from the practice of law.

Standard 2.3 culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Standard 2.4(b) provides that a member's failure to perform services in an individual matter not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6(a) of the Standards provides that violations of [section 6103 or 6068] shall result in disbarment or suspension depending upon the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

Standard 2.10 provides culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim with due regard to the purpose of imposing discipline set forth in standard 1.3.

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

COSTS OF DISCIPLINARY PROCEEDINGS.


Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 3, 2011, the prosecution costs in this matter are \$7,176.62. Respondent further acknowledges that this is an estimate and 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: Kim T. Nguyen	Case number(s): 09-O-19074, 10-O-07064, 10-O-08649, 10-O-03281, 10-O-05114
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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.

Date <u>8/8/11</u>	Respondent's Signature 	Kim T. Nguyen Print Name
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Date <u>8/8/11</u>	Respondent's Counsel Signature 	Print Name
Date	Deputy Trial Counsel's Signature	Mia Ellis Print Name

(Do not write above this line.)

In the Matter of:
Kim T. Nguyen

Case Number(s):
09-O-19074, 10-O-07064, 10-O-08649, 10-O-03281, 10-O-05114

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 10, paragraph 3: The word "falsely" is inserted before the word "asserted" and after the word "and."

Page 10, paragraph 5: The name "Shaffer" in that paragraph is corrected to read "Saffer." In addition, the following sentence is added to the paragraph: "Respondent thereafter neither promptly returned to Saffer any portion of the \$3,000 advanced fee nor provided him with an accounting for that fee."

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

8/10/11

Judge of the State Bar Court

DONALD F. MILES

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 11, 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:

KIM T. NGUYEN
LAW OFFICE OF KIM T NGUYEN
2913 EL CAMINO REAL # 738
TUSTIN, CA 92782

by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

by overnight mail at _____, California, addressed as follows:

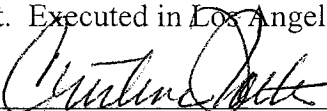
by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Mia R. Ellis, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 11, 2011.



Cristina Potter
Case Administrator
State Bar Court