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| <b>State Bar Court of California</b><br><b>Hearing Department</b><br><b>Los Angeles</b><br><b>ACTUAL SUSPENSION</b>  |  |  | <b>PUBLIC MATTER</b> |
| Counsel For The State Bar<br><br>AGUSTIN HERNANDEZ<br>Deputy Trial Counsel<br>1149 South Hill Street<br>Los Angeles, CA 90015-2299<br>(213) 765-1713<br><br>Bar # 161625 | Case Number(s):<br>09-O-19161<br>10-O-01325  | For Court use only<br><br><b>FILED</b><br><b>JUN 20 2011</b><br>STATE BAR COURT<br>CLERK'S OFFICE<br>LOS ANGELES |                      |
| In Pro Per Respondent<br><br>CARL WILLIAM NYMAN<br>P.O. Box 593<br>Litchfield Park, Arizona 85340<br><br>Bar # 57915   | Submitted to: <b>Assigned Judge</b><br><br>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND<br>DISPOSITION AND ORDER APPROVING<br><br><b>ACTUAL SUSPENSION</b><br><br><input type="checkbox"/> PREVIOUS STIPULATION REJECTED |  |                      |
| In the Matter of:<br>CARL WILLIAM NYMAN<br><br>Bar # 57915<br><br>A Member of the State Bar of California<br>(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 18, 1973.
- (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."



- (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: 2012 and 2013. (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.
- (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. Respondent has no prior record of discipline since being admitted to the practice of law on December 18, 1973.
- (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.
- (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:**

Respondent has been receiving treatment for depression since June 2005. At the time of the misconduct in this stipulation, Respondent was suffering from depression. His depression was more severe in 2008 and 2009 when he encountered stress from marital difficulties and financial stress from his law practice.

**D. Discipline:**

- (1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of one year.

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following:

(b)  The above-referenced suspension is stayed.

- (2)  **Probation:**

Respondent must be placed on probation for a period of two 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 thirty (30) 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.

(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:
  - Substance Abuse Conditions
  - Medical Conditions
  - Law Office Management 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:**

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5. On February 26, 2009, counsel for Cynthia Andrews informed Respondent that Andrews's default had been entered by the court. Respondent did not file with the court the response to the petition or other documents signed by Andrews. Andrews's check payable to the court for filing fees was never negotiated.
6. On March 23, 2009, Respondent faxed and mailed to counsel for Cynthia Andrews a proposed stipulation for an order setting aside Andrews's default. On March 25, 2009, counsel for Cynthia Andrews returned to Respondent by mail the signed stipulation. Upon the telephonic request of counsel for Cynthia Andrews, the court took the default hearing in the Andrews case scheduled for March 27, 2009, off calendar.
7. Respondent received the signed stipulation from opposing counsel to set aside the default. Thereafter, Respondent did not file the stipulation with the court or a response to the petition on behalf of Andrews. Counsel for Cynthia Andrews was under the mistaken impression that Respondent had filed the stipulation to set aside Andrews's default as well as the pleadings responsive to the petition which Respondent had provided in draft form.
8. On April 15, 2009, counsel for Cynthia Andrews mailed a letter to Respondent asking for Andrews's preliminary declaration of disclosure and for certain information about Andrews's income and finances. Thereafter, in April 2009, counsel for Cynthia Andrews served discovery requests on Respondent. Respondent received the discovery requests in the Andrews case but did not provide responses.
9. On June 5, 2009 and July 1, 2009, Respondent requested by email that Andrews advance further fees of \$1,500 pursuant to the fee agreement. On July 14, 2009, Andrews paid Respondent a further payment of \$1,500 in advanced fees.
10. On August 4, 2009, counsel for Cynthia Andrews filed motions to compel discovery and served Respondent. Respondent received the motions but did not inform Andrews or file any response.
11. On August 11, 2009, Andrews called Respondent's office and left a voice message requesting that Respondent return his call. Respondent did not return Andrew's call.
12. On August 11, 2009, August 19, 2009, August 25, 2009, and September 9, 2009, Andrews sent email to Respondent requesting to know the status of his case and requesting an itemized statement for Respondent's fees. Respondent received the email but did not respond.
13. Thereafter, Andrews learned from the court's website that there was a hearing scheduled in his case for September 25, 2009, on the motions to compel discovery filed by counsel for Cynthia Andrews.
14. On September 25, 2009, Respondent failed to appear at the hearing on the motions to compel, but Andrews appeared and informed the court that Respondent was not communicating with him and that he wished to represent himself. Opposing counsel informed the court that he had been under the mistaken impression that Respondent had filed the stipulation to set aside default as well as a response to the petition which Respondent had provided to opposing counsel. Andrews agreed to provide the requested discovery to opposing counsel. The court set a further status conference for November 20, 2009. Thereafter, Andrews represented himself, and the Andrews case was concluded with a hearing held on November 20, 2009.
15. Respondent did not provide Andrews with an accounting for the \$3,000 in fees advanced by Andrews.

16. Respondent did not earn all of the \$3,000 received from Andrews. Respondent did not refund any of the \$3,000 received from Andrews.

#### CONCLUSIONS OF LAW:

17. By not filing the stipulation to set aside Andrews's default and his response to the petition, not responding to discovery, and failing to appear in court on September 25, 2009, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By not responding to Andrews's telephonic and email requests for information on the Andrews case and not informing him of the discovery requests and the hearing on the motions to compel, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services and failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

19. By not providing Andrews with an accounting for the \$3,000 in advanced fees despite Andrews's request for an itemized statement, 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).

20. By not refunding any of the unearned fees of \$3,000 received from Andrews, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 10-O-01325 (Complainant: State Bar Investigation)

#### FACTS:

21. Prior to January 2006, Mary Jane Beadle ("Mary Jane") was injured in an auto accident and sustained injuries which rendered her unable to attend to her affairs.

22. On January 17, 2006, Mary Jane's spouse, Duane Beadle ("Duane"), filed a petition for dissolution of marriage in the San Bernardino County Superior Court, case no. RFLRS048147 ("Beadle dissolution").

23. On July 12, 2006, Respondent was employed to represent Mary Jane in the Beadle dissolution. Mary Jane's family paid Respondent \$3,500 in advanced fees for his representation.

24. On August 9, 2006, Respondent appeared in court in the Beadle dissolution on an ex-parte motion for appointment of a guardian ad litem for Mary Jane. At that time, the court appointed David Kuhn ("Kuhn") as guardian ad litem for Mary Jane.

25. On March 16, 2007, Respondent filed a petition for appointment of Kuhn as a conservator for Mary Jane in the San Bernardino County Superior Court, case no. CONPS0700040 (“Beadle conservatorship”).

26. On June 19, 2007, the court granted the request to appoint Kuhn as a temporary conservator. The court also appointed attorney James B. Church (“Church”) to represent Mary Jane.

27. On July 23, 2007, the court granted the petition for the conservatorship and appointed Kuhn as conservator for Mary Jane. Respondent was present in court on that date when the court also set a hearing regarding inventory and appraisal for December 3, 2007.

28. On December 3, 2007, Respondent did not appear at the hearing regarding the inventory and appraisal in the Beadle conservatorship. The court set an order to show cause hearing regarding sanctions for January 14, 2008, and ordered both Respondent and Kuhn to appear on that date. On December 3, 2007, the court served a copy of the minute order on Respondent by mail. Respondent received the order.

29. On January 14, 2008, Respondent appeared for the order to show cause, and the court declined to impose any sanctions.

30. Thereafter, Respondent represented Kuhn in filing a partial inventory and appraisal on April 10, 2008.

31. On July 9, 2008, Respondent sent other counsel to appear for him at a status conference in the Beadle conservatorship who informed the court that the Beadle dissolution was still pending. At that time, the court informed the parties that there should not be two separate courts making orders on community property and that some coordination or a petition to consolidate may be required, and the court set a further hearing on August 20, 2008. Thereafter, Respondent never took any action to consolidate the Beadle dissolution and the Beadle conservatorship.

32. On August 20, 2008, Respondent sent other counsel to appear for him at a conservatorship compliance review hearing in the Beadle conservatorship. At that time, Kuhn filed a final inventory and appraisal. The court ordered that Respondent keep Church informed of the status of the Beadle dissolution case. The court also continued the hearing to October 22, 2008.

33. On September 29, 2008, Respondent appeared by telephone for an accounting review in the Beadle conservatorship and requested a continuance, informing the court that an accounting would be filed in two weeks. At that time, the court continued the hearing to November 17, 2008. Thereafter, Respondent and Kuhn did not file an accounting in the Beadle conservatorship.

34. On October 22, 2008, Respondent did not appear for the previously scheduled conservatorship compliance review hearing in the Beadle conservatorship. Respondent did not provide the court with a status report on the Beadle dissolution as previously requested by the court. At that time, the court continued the hearing to November 17, 2008, and ordered that Respondent and Duane be present. The court mailed a copy of the minute order to Respondent at his address of record. Respondent received the minute order.

35. On November 17, 2008, Respondent did not appear for the accounting review and the conservatorship compliance review hearing in the Beadle conservatorship. Kuhn appeared and informed the court that Respondent had not returned his phone calls to inform Kuhn of the status of the Beadle dissolution so that he could report to the court. Kuhn also informed the court that Kuhn wished to resign as conservator. At that time, the court continued the hearing to January 8, 2009.
36. On January 8, 2009, neither Respondent nor Kuhn appeared for the continued accounting review in the Beadle conservatorship. Church appeared for Mary Jane and stated that he had been unable to contact Kuhn or Respondent and that he intended to petition to suspend Kuhn's powers as conservator and request the appointment of the public guardian. The court continued the hearing to February 5, 2009.
37. On February 5, 2009, neither Kuhn nor Respondent appeared in court in the Beadle conservatorship. Church appeared for Mary Jane and informed the court that Kuhn had told him he was willing to appear before the court. The court directed Church to prepare a citation for Respondent to appear and to give notice to Kuhn to appear on February 11, 2009.
38. On February 11, 2009, Respondent and Kuhn appeared in court in the Beadle conservatorship. The court directed Respondent to file a report regarding the family law issues and status of that matter. The court continued the hearing to February 17, 2009.
39. On February 17, 2009, Respondent and Kuhn appeared in court in the Beadle conservatorship. At that time, Kuhn informed the court that he wished to resign as conservator, and the court gave him until March 17, 2009, to file an inventory, appraisal and accounting. The court relieved Kuhn as guardian ad litem over the family law issues and appointed attorney Donnasue Smith-Ortiz ("Ortiz") as guardian ad litem. The court set a further hearing for March 17, 2009, to address the issue of vacancy of the conservator.
40. On February 26, 2009, Respondent appeared in court for the trial in the Beadle dissolution. Due to the Beadle conservatorship, the court took the matter off-calendar.
41. On March 17, 2009, Respondent appeared in court in the Beadle conservatorship. Attorney Eric Becker ("Becker") appeared for Lee Ann Hitchman ("Hitchman"), a private fiduciary, who was willing to petition for appointment as conservator. At that time, the court continued the hearing to May 18, 2009.
42. On May 18, 2009, Respondent did not appear for the continued hearing in the Beadle conservatorship. Ortiz reported that she had received some family law materials but that they were in disarray. The court ordered that Kuhn and Respondent file a corrected inventory and that Respondent appear on July 20, 2009, to show why sanctions should not be imposed. The court clerk served a copy of the minute order by mail on Respondent. Respondent received the minute order.
43. On June 11, 2009, the court in the Beadle conservatorship appointed Hitchman as conservator.
44. On July 20, 2009, Respondent did not appear for the order to show cause in the Beadle conservatorship. Attorney Karin Horspool ("Horspool") appeared as counsel for Kuhn. At that time, the court ordered that Respondent pay sanctions of \$400 to the court for his failure to appear and set a further date for an order to show cause hearing regarding Respondent's prior failures to appear and comply with court orders for September 14, 2009.

45. On July 28, 2009, Horspool filed a substitution of attorney to substitute in place of Respondent as counsel for Kuhn in the Beadle conservatorship. Thereafter, Horspool filed a first and final account for Kuhn as conservator of the Beadle conservatorship.

46. On September 11, 2009, Respondent paid the \$400 in sanctions to the court.

47. On September 14, 2009, Respondent appeared at the order to show cause hearing in the Beadle conservatorship. Thereafter, on October 15, 2009, Respondent filed his declaration regarding the issue of sanctions, acknowledging that he missed court appearances due to unspecified personal issues and that he had not billed his client for fees exceeding the initial \$3,500 he had received.

48. On November 19, 2009, the court filed a ruling and ordered that Respondent pay sanctions in the amounts of \$350 to the court, \$450 to Church, and \$450 to Vincent B. Garcia ("Garcia"), counsel for Duane in the Beadle dissolution action, within 60 days. The court served a copy of the ruling on Respondent by mail. Respondent received the ruling.

49. To date, Respondent has not paid any portion of the sanctions imposed on November 19, 2009, to the court, Church or Garcia.

#### CONCLUSIONS OF LAW:

50. By failing to appear in court for hearings in the Beadle conservatorship on December 3, 2007, October 22, 2008, November 17, 2008, January 8, 2009, and February 5, 2009; failing to provide required status reports to the court and counsel for Mary Jane; failing to consolidate the Beadle dissolution and the Beadle conservatorship; and failing to file an accounting in the Beadle conservatorship, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

51. By not paying the sanctions of \$350 to the court, \$450 to Church, and \$450 to Garcia, Respondent willfully 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 willful violation of Business and Professions Code, section 6103.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was June 1, 2011.

#### AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: “the 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.”

Standard 1.6(a) states that “[i]f two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, 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.”

Standard 2.2(b) states that “[c]ulpability 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 wilful 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.”

Standard 2.4(b) provides that “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client 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) provides that Respondent’s violation of Business and Professions Code, section 6068(m) shall result in suspension or disbarment “depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

Standard 2.6(b) also provides that Respondent’s violation of Business and Professions Code, section 6103 shall result in suspension or disbarment depending on the gravity of the offense and the harm to the victim.

#### Case Law

The Supreme Court has emphasized the importance of the standards and has held that great weight should be given to the application of the standards in determining the appropriate level of discipline. (In re Silverton (2005) 36 Cal. 4th 81.) The standards must be followed unless there is a compelling reason justifying a deviation from the standards. (In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.) The Supreme Court has held that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. In re Silverton, supra, 36 Cal. 4th at p. 91-92.

Case law supports a 30-day actual suspension in this matter. An attorney received a 30-day actual suspension for abandoning one client and had no record of prior discipline in over 30 years of practice. (Layton v. State Bar (1990) 50 Cal. 3d 889.) Another attorney received 60-day actual suspension for failing to provide an accounting and/or failing to refund unearned fees in three client matters, and failing to perform legal services with competence in two of those matters. (Matthew v. State Bar (1989) 49 Cal. 3d 784.)

Pursuant to standard 2.2(b), the most severe sanction for Respondent's misconduct is a three-month actual suspension for his violation of rule 4-100(B)(3), Rules of Professional Conduct.

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Respondent, however, is entitled to mitigation for his 37 years of practice without prior discipline and for suffering from depression at the time of the misconduct.

In this case, a one-year stayed suspension with thirty (30) days of actual suspension and two years of probation are sufficient to protect the public, the courts and the legal profession.

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| In the Matter of:<br>CARL WILLIAM NYMAN | Case Number(s):<br>09-O-19161 & 10-O-01325 |
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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 |
|--|------------------|-----------------------|
| Timothy L. Andrews   | \$1,565.00       | July 14, 2009         |
| James B. Church  | \$450.00         | November 19, 2009     |
| Vincent B. Garcia  | \$450.00         | November 19, 2009     |
| San Bernardino County Superior Court<br>(Case No. CONPS 0700040) | \$350.00         | November 19, 2009     |

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than thirty (30) days after the effective date of 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 |
|---------------------------|------------------------|-------------------|
|                           |                        |                   |
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- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

**c. Client Funds Certificate**

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

- 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**

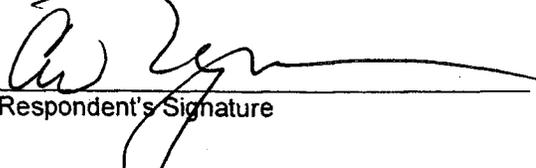
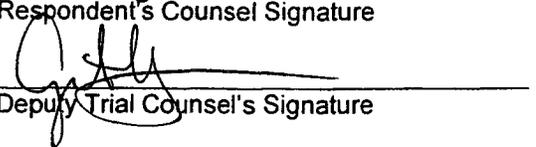
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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|---|--|
| In the Matter of:<br>CARL WILLIAM NYMAN | Case number(s):<br>09-O-19161 & 10-O-01325 |
|---|--|

**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>6-9-2011</u><br>Date      | <br>Respondent's Signature           | <u>CARL WILLIAM NYMAN</u><br>Print Name |
| <u>June 14, 2011</u><br>Date | <br>Deputy Trial Counsel's Signature | <u>AGUSTIN HERNANDEZ</u><br>Print Name  |

(Do not write above this line.)

In the Matter of:  
CARL WILLIAM NYMAN

Case Number(s):  
09-O-19161 & 10-O-01325

### 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 - D. (1)(b) - PLACE CHECK MARK IN BOX.*

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.)**

06-20-11  
Date

  
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 June 20, 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:

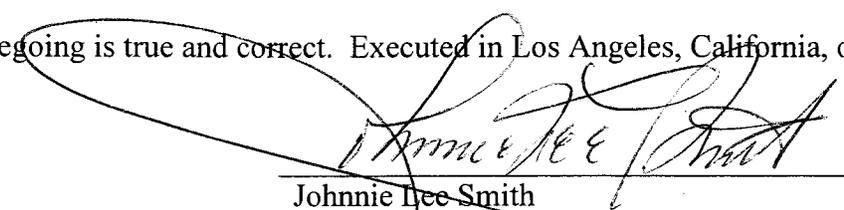
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CARL WILLIAM NYMAN  
P O BOX 593  
LITCHFIELD PARK AZ 85340

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 20, 2011.



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Johnnie Lee Smith  
Case Administrator  
State Bar Court