

ORIGINAL

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		kwiktag® 018 038 733 	
Counsel For The State Bar Cindy McCaughey Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 213/765-1491 Bar # 222126	Case Number(s): 10-C-08846	PUBLIC MATTER FILED MAR 10 2011  STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
Counsel For Respondent James I. Ham, Esq. Pansky Markle Ham LLP 1010 Sycamore Ave., Suite 308 South Pasadena, CA 91030 Bar # 100849	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
In the Matter of: Albert R. Zarate Bar # 165863 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

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 October 13, 1993.
- (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 11 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. (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.

(Do not write above this line.)

- (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.
- (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 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:

- (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 sixty 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: Respondent resides out of state - see additional conditions below.

- (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 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.**

☐ 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: January 5, 2010.
- (5) ☒ **Other Conditions:**

Within 1 year of the effective date of discipline, Respondent must either (1) provide to the Office of Probation satisfactory evidence of proof of completion of a session of the State Bar of California's Ethics School and passage of the test at the end of that session, or (2) provide to the Office of Probation satisfactory evidence of proof of completion of 12 hours of live or participatory MCLE approved courses in legal ethics.

Within 1 year of the effective date of discipline, Respondent must provide to the Office of Probation satisfactory evidence of 40 hours of community service for any non-profit organization. Respondent is not to receive any remuneration for his community service. Satisfactory evidence might include a letter under penalty of perjury from a director or official of the non-profit organization setting forth at a minimum the number of hours Respondent provided, the type of service Respondent provided, and that Respondent did not receive any remuneration. Respondent is to complete a minimum of 10 hours in each quarter, until he has completed the 40 hours, and to provide the proof to the Office of Probation with the quarterly report then due.

**ATTACHMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION IN THE MATTER OF ALBERT R. ZARATE.**

FACTS AND CONCLUSIONS OF LAW

Respondent Albert R. Zarate admits that the following facts are true and that he is culpable of violation of the Business & Professions Code as follows:

FACTS

1. On or about August 23, 2010, in the Fairfax County General District Court, case number GC10141697, Respondent entered a plea of guilty and was convicted of violating Virginia Crime section 18.2-96 (petit larceny), one count, a misdemeanor which involves moral turpitude.
2. In the underlying matter, on or about July 19, 2010, after Respondent purchased a men's necktie from Nordstrom's Department Store in Tysons Corner Center, VA, Respondent concealed several other neckties within his shopping bag and left the store without paying for the neckties.
3. The parties acknowledge that the elements of the offense charged in Fairfax County General District Court, would constitute a violation of California Penal Code section 490.5 (shoplifting).
4. On or about August 23, 2010, in the Fairfax County General District Court, Respondent was sentenced to one year probation and 360 days in jail with 350 days of that term suspended. Respondent was additionally ordered to pay various fines and fees and to stay out of Nordstrom's.
5. On or about December 22, 2010 in State Bar Court Case no. 10-C-08846, the Review Department issued an order imposing interim suspension from the practice of law effective January 5, 2010. Respondent was also ordered to comply with rule 9.20, California Rules of Court. Respondent has abstained from the practice of law during the interim suspension and has complied with Rule 9.20.

CONCLUSIONS OF LAW

1. By being convicted of violating Virginia Crime Code section 18.2-96 (petit larceny), a misdemeanor, Respondent committed an act involving moral turpitude, dishonesty or corruption in violation of California Business and Professions Code section 6106.

PENDING PROCEEDINGS

The disclosure date referred to on page 2, paragraph A(7), is not applicable

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 16, 2011, the prosecution costs in this matter are \$1,636.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

ADDITIONAL MITIGATING CIRCUMSTANCES

Under Standard 1.2(e)(i), Respondent has no prior record of discipline since his admission to the State Bar of California on October 13, 1993.

Under Standard 1.2(e)(iv) Respondent was experiencing extreme emotional difficulties due to a marital separation at the time of the act of professional misconduct, which Dr. Mahteme Selassie of Bethesda, MD establishes the marital situation was directly responsible for the misconduct and Dr. Selassie has provided that because Respondent immediately sought, and is actively participating in treatment, Respondent no longer suffers from such difficulties.

Under Standard 1.2(e)(v) Respondent demonstrated spontaneous candor and cooperation displayed to the State Bar during disciplinary investigation and proceedings by immediately self-reporting the incident in detail, accepting full responsibility. Moreover, Respondent entered his guilty plea in the Fairfax County General District Court shortly after charges were filed.

Under Standard 1.2(e)(vi) Respondent has provided letters of good character from a number of colleagues who are aware of his misconduct and nonetheless attest to his good character.

Under Standard 1.2(e)(vi) Respondent has promptly and spontaneously demonstrated remorse for his misconduct by voluntarily performing approximately 40 hours of non-court ordered community service, seeking psychological counseling and reporting the misconduct to his current employer, a federal government agency. Because Respondent's employment requires a national security clearance, Respondent is being monitored by his employer. Respondent has been granted conditional security clearance, and Respondent is required to comply with certain conditions, including psychological counseling, reporting any changes in his mental health, and reporting any future incidents which could raise a national security concern. Respondent has been in compliance with these conditions.

AUTHORITIES SUPPORTING DISCIPLINE

Pursuant to Standard 1.3:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a

member's professional misconduct 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. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Pursuant to Standard 3.2:

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only 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 two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

The Supreme Court has recognized that the Standards provide a guideline and do not mandate the discipline to be imposed. (*Boehme v. State Bar* (1988) 47 Cal.3d 448, 454; *Greenbaum v. State Bar* (1987) 43 Cal.3d 543, 550.) The Court has also held that each case must be resolved on its own particular facts and not by application of rigid standards. (*In re Nadrich* (1988) 44 Cal.3d 271, 278.) Moreover, the Supreme Court has rejected imposition of the two-year minimum. (*In re Young* (1989) 49 Cal.3d 257, 268-70).

After finding aggravating factors of fraud on the bail bondsman surrounding the conviction for harboring or aiding a principal in a felony involving moral turpitude (Pen.Code, § 32), the Court in *In re Young, supra*, 49 Cal.3d 257 imposed a five-year suspension, stayed, and a four-year actual suspension, with credit for the three years Young had spent on interim suspension.

In the *Matter of DeMassa* (1991) 1 Cal. State Bar Ct. Rptr 737, the Review Department found a one-year stayed suspension with sixty days actual suspension appropriate discipline when the Respondent was convicted of a misdemeanor (after several felony charges were dismissed) involving moral turpitude but had no prior discipline, numerous character references and in the 12 years between the conviction and imposition of discipline, Respondent demonstrated a high degree of good character.

The DeMassa court pointed out:

In several cases where original proceedings were brought resulting in a finding of a single instance of giving knowingly false testimony or making a knowingly false statement, the Court, upon consideration of substantial mitigating evidence limited discipline to a reproof. (citing, *Mushrush v. State Bar* (1976) 17 Cal.3d 487 [rejecting a one year recommended period of actual suspension and ordering public reproof for one instance of false statements in obtaining a court order confirming a bankruptcy sale]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159 [three justices dissenting in favor of no discipline]; *Sullins v. State Bar* (1975) 15 Cal.3d 609 [attorney publicly reproofed for non disclosure of material

information, no prior record of discipline in his 45 years as an attorney]; *Mosesian v. State Bar* (1972) 8 Cal.3d 60 [local committee's recommendation of three months suspension reduced to reprimand].).



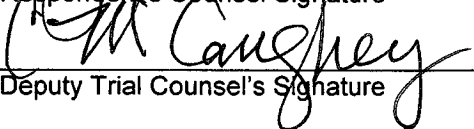
A two-year stayed suspension with sixty days actual suspension is the appropriate discipline here. Respondent has been a member since 1993 with no prior record of discipline. The misconduct which led to the criminal conviction was outside the practice of law with slight harm to the public. Respondent recognized his wrongdoing and immediately sought and continues treatment for the situation. Respondent is being monitored through his employer and must demonstrate a high level of rehabilitation in order to maintain his employment which Respondent has chosen to do. Thus, the purposes set out in Standard 1.3 are met with this disposition.

(Do not write above this line.)

In the Matter of: Albert R. Zarate	Case number(s): 10-C-08846
---------------------------------------	-------------------------------

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>3/2/2011</u> Date	<u></u> Respondent's Signature	<u>Albert R. Zarate</u> Print Name
<u>3/3/2011</u> Date	<u></u> Respondent's Counsel Signature	<u>James I. Ham</u> Print Name
<u>3-3-11</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Cindy McCaughey</u> Print Name

(Do not write above this line.)

In the Matter of:
Albert R. Zarate

Case Number(s):
10-C-08846

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:

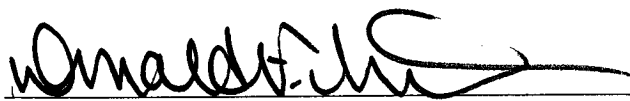
- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

On page 5, the "X" in box F(3) is deleted to remove the conditional rule 9.20 requirement.

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

3/10/11



Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 March 10, 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:

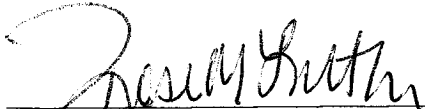
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES IRWIN HAM, ESQ.
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030

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

CYNTHIA MCCAUGHEY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 10, 2011.



Rose Luthi
Case Administrator
State Bar Court