

State Bar Court of California
Hearing Department
San Francisco

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<p>Counsel For The State Bar</p> <p>Donald R. Steedman 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 104927</p>	<p>Case Number (s) 10-H-03667</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED <i>[Signature]</i></p> <p>JUL 20 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Guadalupe Gamino 1169 Howard St., #204 San Francisco, CA 94103</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 74011</p> <p>In the Matter Of: Guadalupe Gamino</p> <p>Bar # 74011</p> <p>A Member of the State Bar of California (Respondent)</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 June 28, 1977.
- (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 10 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."

(Do not write above this line.)

- (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 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs 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 00-O-12709
 - (b) Date prior discipline effective 4/27/01
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct 3-110(A), 3-700(D)(1), 3-700(D)(2) and Business and Professions Code sections 6068(i) and 6068(m).
 - (d) Degree of prior discipline Private Reprimand
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

On October 5, 2009, respondent was publicly reprimanded for committing violations of Rule of Professional Conduct 1-110, 3-110(A) and Business and Professions Code sections 6068(o)(3) and 6068(m) (case number 01-H-04221 et al.).
- (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.
- (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 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 one year, 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 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 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:
- | | |
|---|---|
| <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 321(a)(1) & (c), 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:**

Attachment language begins here (if any):

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was June 15, 2010.

STATEMENT OF FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

1. Respondent wilfully violated Rules of Professional Conduct, rule 1-110(A), by failing to comply with conditions attached to a reproof administered by the State Bar pursuant to Business and Professions Code sections 6077 and 6078 and rule 956 (now Rule 9.19), California Rules of Court, as follows:
2. On or about October 5, 2009, acting under the authority of Business and Professions Code section 6077, the Hearing Department of the State Bar Court of California issued an order imposing a public reproof upon respondent in case number 01-H-04221 et seq. Pursuant to California Rule of Court 9.19, the State Bar Court order required respondent to comply with conditions attached to the reproof for at least one year or until he satisfied the restitution conditions contained in the reproof order. The Court found that the stipulation "...protects the public and that the interests of Respondent will be served by any conditions attached to the reproof..."
3. Soon after October 5, 2009, respondent received notice of the reproof order and reproof conditions.
4. The reproof order and reproof conditions became effective on or about November 9, 2009.
5. At a December 7, 2009, status conference at which respondent attended, the Hearing Department orally stated its intention to extend the reproof period until January 1, 2012 and modify the restitution condition. On December 14, 2009, the Hearing Department issued a minute order confirming its December 7, 2009 status conference order. Respondent received notice of the minute order shortly thereafter. The December 14, 2009 order became final fifteen days thereafter.
6. Thereafter, the probation conditions, as modified by the December 14, 2009 order, have remained in full force and effect.
7. Duty to Contact/Meet with the Office of Probation.

(a) One of the conditions of the reproof required respondent to contact and meet with the Office of Probation, as follows:

"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 meet with the probation deputy as directed and upon request."

(b) Respondent violated this condition as follows: On December 7, 2009, respondent agreed to telephone the Office of Probation on December 8, 2009 at a specific time. However, respondent did not make the telephone call at the appointed time or at any other that day or on any other day. On June 11, 2010, respondent contacted the Office of Probation and completed the required meeting.

8. Reporting Condition.

(a) One of the conditions of the reprobation required respondent to submit reports as follows:

“Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation. 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 the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.”

(b) Respondent violated this condition because he failed to timely submit the reports due on or before January 10, 2010 and April 10, 2010 to the Office of Probation. Respondent submitted the required reports on or about June 15, 2010.

9. Restitution Condition.

(a) One of the original reprobation conditions provided as follows:

“Respondent must make restitution to: (1) the City and County of San Francisco in the amount of \$250; and (2) Kenneth Sperandio in the amount of \$8,638.50 plus 10% interest per year from September 1, 1999 (or reimburse the State Bar’s Client Security Fund, to the extent of any payment from the fund to the City and County of San Francisco and/or Kenneth Sperandio, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar’s Office of Probation in Los Angeles;FN9

“Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

“With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by him during that quarter or applicable reporting period.

“To the extent that respondent has paid any restitution prior to the effective date of the public reprobation imposed in this matter, respondent will be given credit for such payment(s) provided satisfactory proof of such is or been shown to the Office of Probation;”

has

"FN9: The court's Amended Confidential Statement of Alternative Dispositions and Orders received stamped on January 30, 2008, stated that the reprobation period would be only one year and did not include specified restitution if respondent successfully completed the ADP. However, at the time this Amended Confidential Statement of Alternative Dispositions and Orders was executed, it was assumed that respondent would have completed restitution prior to the court finding that respondent had successfully completed the ADP. Thus, in light of the fact that the court made a finding that respondent had successfully completed the ADP before the restitution set forth in the Contract had been completed, the court finds it necessary to require restitution as a reprobation condition and for the period of reprobation to last for at least one year or until respondent satisfies the restitution requirement, whichever is later."

(b) The December 14, 2009, stated in relevant part as follows:

"Respondent must make a minimum of [sic] payment of \$1000.00 per quarter. Payments are due on January 10, April 10, July 10 and October 10 of each year. If respondent cannot complete payment of the entire amount owed by January 1, 2012, respondent must file a modification motion."

(c) To date, respondent still owes many thousands of dollars under the above-quoted restitution order.

(d) Respondent violated the restitution condition because he failed to timely make the payment that was due on April 10, 2010. Respondent failed to make that payment until on or about April 21, 2010.

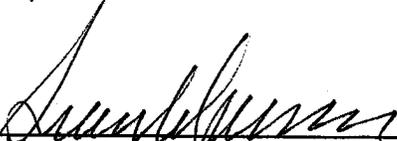
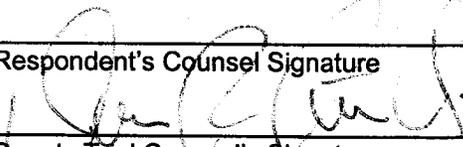
(e) Respondent violated the restitution condition because he failed to submit timely proof that he made restitution payments during the period January 1, 2010 through April 10, 2010. On or about June 15, 2010, respondent provided proof of the restitution payments when he submitted the above-mentioned quarterly reports.

(Do not write above this line.)

In the Matter of Guadalupe Gamino	Case number(s): 10-H-03667
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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 Fact, Conclusions of Law and Disposition.

Date <u>6/30/10</u>	 Respondent's Signature	<u>Guadalupe Gamino</u> Print Name
Date <u>7/2/10</u>	 Deputy Trial Counsel's Signature	<u>Donald R. Steedman</u> Print Name

(Do not write above this line.)

In the Matter Of Guadalupe Gamino	Case Number(s): 10-H-03667
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), 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 July 19, 2010

Patrice McElroy
Judge of the State Bar Court

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 San Francisco, on July 20, 2010 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 San Francisco, California, addressed as follows:

GUADALUPE GAMINO
1169 HOWARD ST #204
SAN FRANCISCO, CA 94103

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

DONALD STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 20, 2010.



Laurretta Cramer
Case Administrator
State Bar Court