

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar ELINA KREDITOR DEPUTY TRIAL COUNSEL 1149 S. HILL STREET LOS ANGELES, CA 90015 213-765-1714 (T) 213-765-1319 (F) Bar # 250641	Case Number(s): 10-H-08935	For Court use only PUBLIC MATTER FILED JUN 28 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent VICENTA E. MONTOYA-TORRES 330 E. CHARLESTON BLVD SUITE 200 LAS VEGAS, NV 89104 702-386-0292 (T) 702-383-8209 (F) Bar # 97192	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: VICENTA E. MONTOYA-TORRES Bar # 97192 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted April 1, 1981.
- (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.



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- (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):
 - ☒ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
 - (a) ☒ State Bar Court case # of prior case 95-O-14347; 95-O-16029; 95-O-17734
 - (b) ☒ Date prior discipline effective March 13, 1997
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: 3 counts of Rule of Professional Conduct 3-110(A), 3 counts of 6068(m), 1 count of 6068(i).
 - (d) ☒ Degree of prior discipline was a private reproof.
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline. SEE AGGRAVATING CIRCUMSTANCES--PRIOR DISCIPLINE section in the ATTACHMENT TO STIPULATION
- (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. see MITIGATING CIRCUMSTANCES section in the Attachment to Stipulation
- (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. see MITIGATING CIRCUMSTANCES section in the Attachment to Stipulation
- (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. see MITIGATING CIRCUMSTANCES section in the Attachment to Stipulation
- (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.

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- (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:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

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

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ 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.
- (4) ☒ 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.

- (5) ☐ 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.

- (6) ☒ 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.
- (7) ☐ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: Respondent has completed Ethics School on April 28, 2011.
- (8) ☐ 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.
- (9) ☐ 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 within one year. **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) ☒ **Other Conditions:**
- MPRE: Respondent has registered to take the August 2011 MPRE. To the extent discipline in this matter become effective after the administration of the August 2011 MPRE and Respondent takes and provides proof of passage of the August 2011 MPRE, such proof of passage shall satisfy the MPRE requirement in the instant Stipulation.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: VICENTA E. MONTOYA-TORRES

CASE NUMBER(S): 10-H-08935

FACTS AND CONCLUSIONS OF LAW

Vicenta E. Montoya-Torres ("Respondent") admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

I. Facts

1. On August 26, 2009, the State Bar Court of California filed an order in case no. 05-J-03259 imposing on Respondent a public reproof (hereinafter "Reproof Order"). On or about August 26, 2009, a case administrator of the State Bar Court properly served a copy of the Reproval Order by mail on Respondent. Respondent received the Reproval Order.
2. On or about September 12, 2009, the Reproval Order became effective, fifteen days after service.
3. The Reproval Order imposed certain conditions attached to the reproval. On or about September 10, 2009, a probation deputy of the Office of Probation mailed a letter to Respondent at her member records address reminding her of the conditions attached to the reproval. Respondent received the letter from the probation deputy.
4. As a condition attached to the Reproval Order, Respondent was required to provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and the passage of the test given at the end of that session, within one (1) year of the effective date of the Reproval Order. Respondent did not attend Ethics School or provide proof of attendance and completion of the test to the Office of Probation within one (1) year. Respondent attended a session of Ethics School on April 28, 2011.
5. As a condition attached to the Reproval Order, Respondent was required to provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one (1) year of the effective date of the Reproval Order. Although Respondent took the MPRE in August 2010, she did not pass the MPRE and thus did not provide proof of passage to the Office of Probation within one (1) year.

II. Conclusions of Law

By not completing Ethics School or the MPRE and providing proof to the Office of Probation within one year of the Reprimand Order, Respondent failed to comply with conditions attached to a public reprimand and thus willfully violated Rules of Professional Conduct, rule 1-110.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was May 10, 2011.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 10, 2011, the costs in this matter are \$2,287. 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.

MITIGATING CIRCUMSTANCES

Respondent has suffered from back pain for a number of years. The condition would occasionally prevent Respondent from working for 1 or 2 days at a time. In October 2010, Respondent was involved in a car accident that exacerbated her back pain. Respondent sought treatment for chronic back pain after the accident. Respondent's acute back pain prevented her from sitting for long periods of time and impacted her ability to concentrate.

Respondent acknowledged that she is at fault for failing to comply with the conditions of the public reprimand and expressed remorse. Respondent has taken steps to remedy the violation by completing ethics school on April 28, 2011 and registering for the next available administration of the MPRE.

AGGRAVATING CIRCUMSTANCES--PRIOR DISCIPLINE

Standard 1.2(b)(i) of the Standards for Attorney Sanctions For Professional Misconduct ("the Standards") provides that the existence of prior record of discipline and the nature and extent of that record must be considered in aggravation. Respondent has been disciplined on two prior occasions by the State Bar of California.

A. Case Nos. 95-O-14347; 95-O-16029; 95-O-17734

On or about February 25, 1997, Respondent entered into a stipulation in case nos. 95-O-14347; 95-O-16029; 95-O-17734. Pursuant to the terms of the Stipulation, Respondent received a private reprimand. Respondent stipulated to violations of section 6068(m) of the Business and Professions Code and rule 3-110(A) of the Rules of Professional Conduct in three client matters. She also stipulated to a violation of section 6068(i) in one of the three client matters.

In the first matter, Respondent failed to file an opening brief on behalf of a client with the Board of Immigration Appeals. She then filed a motion to dismiss the case without discussing the dismissal with her client.

In the second matter, Respondent failed to file a Motion to Reopen in order to obtain a stay of deportation for a client. She also failed to file an opening brief with the 9th Cir. on behalf of the same client. Respondent ultimately filed a motion to dismiss the case without discussing the dismissal with the client.

In the third matter, Respondent failed to pursue a client's case after her motion for a change of venue was denied. She also failed to inform the client that the motion failed and that the Court had ordered the client deported. Upon being contacted by the State Bar regarding this matter, Respondent failed to respond.

B. Case No. 05-J-03259

On or about August 26, 2009, Respondent entered into a Stipulation Re Facts, Conclusion of Law and Disposition in case no. 05-J-03259. Pursuant to the terms of the Stipulation, Respondent was publicly reprimanded. Respondent's failure to comply with the condition of the public reprimand formed the basis of the disciplinary proceedings in the instant matter, case no. 10-H-08935.

In case no. 05-J-032589, Respondent stipulated to violations of section 6068(m) of the Business and Professions Code and Rule 3-110(A) of the Rules of Professional Conduct. The violations stemmed from Respondent's handling of an immigration matter in Nevada. Respondent failed to supervise her secretary, who filed a Motion to Re-Open on behalf of the client and signed Respondent's name on the Motion, initialing behind the Respondent's signature. Respondent also failed to investigate the client's medical circumstances in order to appeal an order in absentia to deport the client. Respondent then failed to file an Opening Brief with the Board of Immigration Appeals. When the appeal was denied, Respondent failed to advise the client regarding the outcome of the appeal or his right to appeal the decision to the 9th Circuit. After the client hired new counsel, he overcame removal proceedings. Specifically, the deportation order was rescinded on grounds of ineffective assistance by Respondent. Respondent's handling of this matter resulted in a private reprimand and a \$500 fine from the State Bar of Nevada.

AUTHORITIES SUPPORTING DISCIPLINE

A. Standards for Attorney Sanctions For Professional Misconduct

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

Standard 2.9 provides that a wilful violation of rule 1-110 of the Rules of Professional Conduct shall result in suspension.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding.

Standard 1.7 (b) provides, in relevant part, that where a member is found culpable of professional misconduct and has a record of two prior impositions of discipline, the degree of discipline shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

B. Case Law

While the standards are entitled to great weight, “the recommended discipline must rest upon a balanced consideration of relevant factors.” *Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119 (1994). The standards need not be applied in a talismanic fashion and may be tempered with considerations peculiar to the offense and the offender. See *In re Van Sickle*, 4 Cal. State Bar Ct. Rptr. 980 (2006). Although the standards point to disbarment, several other factors indicate that deviating from the Standards is appropriate. First, the relatively low level of discipline imposed in Respondent’s two prior matters, a private reproof followed by a public reproof, dictate against the imposition of disbarment in this matter. Moreover, the nature of the misconduct in the instant matter, is not so egregious as to dictate strict adherence to the Standards. Finally, the Review Department has, in the past, deviated from a disbarment recommendation in similar cases.

In *In the Matter of Meyer*, 3 Cal. State Bar Ct. Rptr. 697 (1997), Respondent was placed on a two year stayed suspension, and three years probation with conditions, including a 90 day actual suspension. Respondent initially received a private reproof for misconduct in one client matter. When he failed to comply with the conditions of the reproof, he received an additional private reproof. In this third disciplinary matter, Respondent again failed to comply with conditions of the reproof by failing to complete six hours of CLE and failing to submit two probation reports. Although the Court acknowledged that Standard 1.7 (b) called for Respondent’s disbarment, the Court found that “the nature and extent of respondent’s two prior records of discipline are not sufficiently severe to justify our recommending disbarment in this proceeding under standard 1.7(b).” 3 Cal. State Bar Ct. Rptr. at 704. The Respondent in *In the Matter of Meyer* did not appear at trial and the matter proceeded by default. The court found that there were no mitigating circumstances. Moreover, the court found that Respondent’s failure to rectify his misconduct by filing the reports and completing the CLE demonstrated an indifference toward rectification.


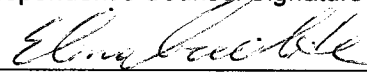
Unlike *Meyer*, the Respondent in the instant matter participated in the proceedings and cooperated with the State Bar in resolving this matter. Moreover, she has attempted to rectify the misconduct by attending Ethics School and registering for the next available administration of the MPRE. Finally, Respondent’s medical condition serves as a further mitigating factor.

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In the Matter of: VICENTA E. MONTOYA-TORRES	Case number(s): 10-H-08935
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>5/17/2011</u> Date	 Respondent's Signature	<u>VICENTA E. MONTOYA-TORRES</u> Print Name
<u>5/31/2011</u> Date	 Deputy Trial Counsel's Signature	<u>ELINA KREDITOR</u> Print Name

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In the Matter of:
VICENTA E. MONTOYA-TORRES

Case Number(s):
10-H-08935

STAYED SUSPENSION ORDER

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

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

6-21-11

Judge of the State Bar Court


RICHARD A. HONN

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 San Francisco, on June 23, 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 , California, addressed as follows:

VICENTA E. MONTOYA-TORRES
330 E CHARLESTON BLVD STE 200
LAS VEGAS, NV 89104

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

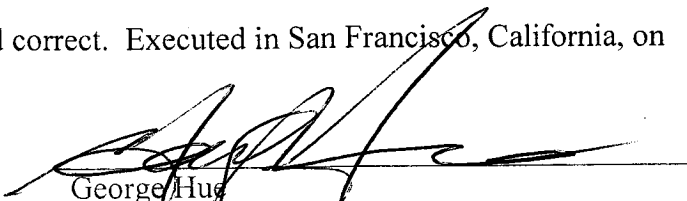
- ☐ by overnight mail at , California, addressed as follows:

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

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

Elina Kreditor, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 23, 2011.


George Hug
Case Administrator
State Bar Court