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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Donald R. Steedman Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2345 Bar # 104927	Case Number(s): 10-O-00469 [10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]	For Court use only PUBLIC MATTER FILED  JAN 14 2018 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent David Michael Spieker 744 Milibank Drive Modesto, CA 95357 (209) 247-2071 Bar # 215548	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: David Michael Spieker Bar # 215548 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED REMANDED BY SUPREME COURT ORDER S201642	

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 3, 2001.
- (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 15 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."

(Effective January 1, 2011)



- (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: four billing cycles following the effective date of discipline. (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. See attachment
- (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. See attachment.
- (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:

See attachment

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 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:

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:

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

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☐ No MPRE recommended. Reason:

- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

(Do not write above this line.)

In the Matter of:
David Michael Spieker

Case Number(s):
10-O-00469 [10-O-00627; 10-O-05159;
10-O-05913; 10-O-07050]

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
Soledad Ibarra Nunez	\$5,000.00	September 25, 2009
Eberardo Perez	\$10,000.00	September 25, 2009
Maria Ramos Gonzalez	\$3,995.00	September 25, 2009
Roberto Hernandez	\$10,000.00	September 25, 2009

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than two years after the effective date of discipline..

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
Soledad Ibarra Nunez	\$208.00	monthly
Eberardo Perez	\$416.00	monthly
Maria Ramos Gonzalez	\$167.00	monthly
Roberto Hernandez	\$416.00	monthly

- ☒ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: David Michael Spieker

CASE NUMBER(S): 10-O-00469 [10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]

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.

FACTS RELEVANT TO ALL MATTERS
[Case Nos. 10-O-00469; 10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]

1. In May 2009, respondent formed a partnership with Araceli Castro ("Castro") and Raul Luna ("Luna") who did business under the names of Home Loan Auditors, Century Alliance Group, and Century Law Center, or slight variations on these names. Home Loan Auditors, Century Alliance Group, and Century Law Center were not lawyers and were not otherwise authorized to practice law. Neither Raul Luna, nor Araceli Castro is a lawyer.
2. One of the activities of the partnership consisted of the practice of law, specifically, mortgage loan modification work.
3. From May 2009, through September 25, 2009, respondent operated this partnership with Castro and Luna.
4. From May 2009, through September 25, 2009, respondent lent his name to be used as an attorney by Castro and Luna in connection with the mortgage loan modification business they operated under the names of Home Loan Auditors, Century Alliance Group, and Century Law Center.
5. In May 2009, respondent entered an agreement whereby Castro and Luna, doing business under the names of Home Loan Auditors, Century Alliance Group, and Century Law Center, would collect legal fees for loan modification services, would pay respondent a salary, and would keep the remainder of the legal fees. Between May 2009, and September 25, 2009, respondent, Luna and Castro shared legal fees in accordance with the above arrangement.
6. From May, 2009, through September 25, 2009, Castro and Luna, doing business under the names of Home Loan Auditors, Century Alliance Group, and Century Law Center, practiced law by handling mortgage loan modification cases for numerous clients. Castro and Luna also employed numerous non-lawyer agents, including but not limited to Faustina Zendejas and Laura Vargas, to handle modification cases for numerous clients. By handling these loan modification cases, Castro and Luna and their non-lawyer agents engaged in the unauthorized practice of law.
7. From May 2009, through September 25, 2009, respondent aided Castro and Luna and their non-lawyer employees in the unauthorized practice of law. By acquiescing to Castro's and Luna's retention

of the client files after September 25, 2009, respondent further aided non-attorneys in the unauthorized practice of law.

8. On September 25, 2009, respondent's employment with the loan modification business was terminated by Castro and Luna. Respondent abandoned the control of the business and many client matters to Castro and Luna, who continued to operate it independently of respondent. Respondent did not take custody and control over all of the client files for which he was responsible and, specifically, did not take custody and control over the client file for Ibarra. Rather, respondent left those files in the custody and control of Castro and Luna.

CONCLUSIONS OF LAW RELEVANT TO ALL MATTERS
[Case Nos. 10-O-00469; 10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]

9. By forming a partnership with non-lawyers, Castro and Luna, to perform legal work on mortgage loan modifications, respondent formed a partnership with persons who were not lawyers where at least one of the activities of that partnership consisted of the practice of law in willful violation of rule 1-310 of the Rules of Professional Conduct.

10. By lending his name to be used as attorney by non-lawyers Castro and Luna in connection with the mortgage loan modification business, Respondent lent his name in violation of section 6105 of the Business and Professions Code.

11. By leaving his employment by Luna and Castro without taking custody and control over all of the client files for which he was responsible, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

12. By sharing legal fees with non-lawyers, Castro and Luna, respondent shared legal fees with a non-lawyer in willful violation of rule 1-320(A) of the Rules of Professional Conduct.

13. By allowing non-lawyers, Castro and Luna, to handle legal work on loan modification cases for numerous clients and allowing them to retain the client files, respondent aided a person or entity in the unauthorized practice of law in willful violation of rule 1-300(A) of the Rules of Professional Conduct.

The Ibarra Matter (Case No. 10-O-00469)

FACTS

14. On May 16, 2009, Soledad Ibarra, also known as Soledad Ibarra Nunez ("Ibarra"), hired respondent, Castro, Luna and the above-mentioned entities to perform mortgage loan modification and restructuring services constituting the practice of law. Ibarra paid \$5,000 in attorney's fees.

15. Respondent was the sole attorney responsible for performing legal services in relation to Ibarra's matter.

16. Respondent, Castro, Luna and the above-mentioned entities performed no legal services of value in relation to Ibarra's mortgage loan modification and restructuring, or otherwise. No portion of the \$5,000 in advanced attorney's fees paid by Ibarra was earned.

17. Prior to December 16, 2009, Ibarra terminated the engagement and requested a refund of the advanced attorney's fees she had paid. Respondent was aware of the request. As sole attorney responsible for performing legal services for Ibarra, respondent was obligated to refund all unearned advanced attorney's fees paid by Ibarra.

18. To date, no portion of the \$5,000 in advanced attorney's fees has been refunded to Ibarra.

CONCLUSIONS OF LAW

19. By failing to perform any services of value for Ibarra, respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

20. By failing to refund \$5,000 in unearned fees to Ibarra, respondent failed to promptly refund any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

The Santillan Matter (Case No. 10-O-00627)

FACTS

21. On August 11, 2009, Leticia and Antonio Santillan ("the Santillans") hired respondent, Castro, Luna and the above-mentioned entities to perform mortgage loan modification and restructuring services constituting the practice of law. The Santillans paid \$3,000 in attorney's fees.

22. At all relevant times, respondent was the sole attorney responsible for performing legal services in relation to the Santillans' matter.

23. Respondent, Castro, Luna and the above-mentioned entities performed no legal services of value in relation to the Santillans' mortgage loan modification and restructuring, or otherwise.

24. Prior to April 12, 2010, the Santillans terminated the engagement and requested a refund of the advanced attorney's fees they had paid. Respondent was aware of the request.

25. As sole attorney responsible for performing legal services for the Santillans, respondent was obligated to refund all unearned advanced attorney's fees paid by the Santillans. After termination of employment, respondent failed to promptly return the unearned fee. The refund was not made until August, 2011, and only after the Santillans obtained a court judgment against respondent for the unearned fees.

CONCLUSIONS OF LAW

26. By failing to perform any services of value for the Santillans, respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

27. By failing to promptly refund \$3,000 in unearned fees to the Santillans, respondent failed to promptly refund any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

The Perez Matter (Case No. 10-O-05159)

FACTS

28. In May 2009, Eberardo Perez ("Perez") hired respondent, Castro, Luna and the above-mentioned entities to perform mortgage loan modification and restructuring services constituting the practice of law. Perez paid \$10,000 in attorney's fees.

29. At all relevant times, respondent was the sole attorney responsible for performing legal services in relation to Perez's matter.

30. After employment, respondent, Castro, Luna and the above-mentioned entities failed to perform competent legal services of value in relation to Perez's mortgage loan modification and restructuring, or otherwise and failed to perform any services of significant value.

31. On June 10, 2010, Perez requested a refund of the advanced attorney's fees he had paid. Respondent received this request shortly thereafter.

32. As sole attorney responsible for performing legal services for Perez, respondent was obligated to refund all unearned advanced attorney's fees paid by Perez, none of which was earned. To date, the unearned fee has not been refunded.

CONCLUSIONS OF LAW

33. By failing to perform any services of value for Perez, respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

34. By failing to refund \$10,000 in unearned fees to Perez, respondent failed to promptly refund any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

The Gonzalez Matter (Case No. 10-O-05913)

FACTS

35. On June 11, 2009, Maria Ramos Gonzalez ("Gonzalez") hired respondent, Castro, Luna and the above-mentioned entities to perform mortgage loan modification and restructuring services constituting the practice of law. Gonzalez paid \$3,995 in attorney's fees.

36. At all relevant times, respondent was the sole attorney responsible for performing legal services in relation to Gonzalez's matter.

37. After employment, respondent, Castro, Luna and the above-mentioned entities failed to perform competent legal services of value in relation to Gonzalez's mortgage loan modification and restructuring, or otherwise and failed to perform any services of significant value.

38. Respondent left Gonzalez's employment on September 25, 2009, when he was terminated by Castro and Luna. As sole attorney responsible for performing legal services for Gonzalez, respondent was obligated to refund all unearned advanced attorney's fees paid by Gonzalez, none of which was earned.

39. To date, the unearned fee has not been refunded.

CONCLUSIONS OF LAW

40. By failing to perform any services of value for Gonzalez, respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

41. By failing to refund \$3,995 in unearned fees to Gonzalez, respondent failed to promptly refund any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

The Hernandez Matter (Case No. 10-O-07050)

FACTS

42. In 2009, Roberto Hernandez ("Hernandez") hired respondent, Castro, Luna and the above-mentioned entities to perform mortgage loan modification and restructuring services constituting the practice of law. Hernandez paid \$10,000 in attorney's fees.

43. At all relevant times, respondent was the sole attorney responsible for performing legal services in relation to Hernandez's matter. Respondent left Hernandez's employment on September 25, 2009, when he was terminated by Castro and Luna.

44. After employment, respondent, Castro, Luna and the above-mentioned entities failed to perform competent legal services of value in relation to Hernandez's mortgage loan modification and restructuring, or otherwise and failed to perform any services of significant value.

45. As sole attorney responsible for performing legal services for Hernandez, respondent was obligated to refund all unearned advanced attorney's fees paid by Hernandez, none of which was earned.

46. To date, the unearned fee has not been refunded.

CONCLUSIONS OF LAW

47. By failing to perform any services of value for Hernandez, respondent intentionally, recklessly, and repeatedly failing to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

48. By failing to refund \$10,000 in unearned fees to Hernandez, respondent failed to promptly refund any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Respondent has caused significant harm to the clients by failing to pay restitution.

Multiple Acts. Respondent engaged in multiple of acts of misconduct, although not amounting to a pattern of misconduct. (See *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1079-1080 [defining pattern of misconduct].)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline, but the misconduct is serious. However, some weight in mitigation should be accorded to this factor (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Candor/Cooperation: Respondent has cooperated with the State Bar by admitting his culpability and entering this stipulation and should receive credit in mitigation for these actions (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed 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.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing multiple acts of professional misconduct. Standard 1.6(a) requires that where a respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to respondent’s misconduct is found in standard 2.6, which provides that a violation of Business and Professions Code section 6105 should result in a suspension or disbarment depending upon the gravity of the offense, the extent of harm with due regard for the purpose of imposing discipline.

Respondent became the employee of non-attorneys who operated a combination law office/loan modification practice. The State Bar received five client complaints, mostly from individuals who never met respondent. The arrangement lasted for about three months in 2009, at which point the non-attorneys terminated respondent's employment and kept the client files. A year later, the Department of Real Estate removed the non-attorneys from business. The five clients paid a total of \$23,995 to the non-attorneys. Respondent received \$500 per case. Respondent paid a settlement to one of the clients, after the client sued him in small claims court. Respondent has not paid restitution to the others.

Thus, the gravamen of the case is aiding in the unauthorized practice of law (UPL), fee sharing, license lending, and improper partnership.

The Standards state that suspension or disbarment should be imposed depending upon the extent of harm, the gravity of the offense and consideration of the purposes of imposing discipline (Std. 1.3, 2.6 and 2.10). In this instance, we have serious misconduct and significant harm to the clients who have not been repaid. The need for public protection is especially inherent in fee-splitting/partnership/UPL cases like this because of the harm that can be caused to clients. Therefore, a one-year period of actual suspension is appropriate and will adequately protect the public, especially given the fact that respondent (1) has no prior discipline, (2) has admitted his misconduct and agreed to enter a pretrial stipulation, and (3) has agreed to make full restitution.

The stipulated level of discipline is appropriate under the Standards and is consistent with the approach to determining level of discipline in *In re Silverton*, *supra*. Further, the stipulated level of discipline is in line with the reported cases involving similar misconduct. (See *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178 [six month's actual suspension]; *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 [two years' actual suspension]; *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635 [18 months' actual suspension].)

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 30, 2012.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAVID MICHAEL SPIEKER	Case number(s): 10-O-00469 [10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]
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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.

12/20/2012

Date



Respondent's Signature

David Michael Spieker

Print Name

12/27/2012

Date


Respondent's Counsel Signature
Deputy Trial Counsel

DONALD R STEEDMAN
Print Name

Donald R. Steedman

Print Name

Date

Deputy Trial Counsel's Signature

(Do not write above this line.)

In the Matter of: DAVID MICHAEL SPIEKER	Case Number(s): 10-O-00469 [10-O-00627; 10-O-05159; 10-O-05913; 10-O-07050]
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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 p. 2, (8) Payment of Disciplinary Costs, add the years "(2014, 2015, 2016 and 2017)" after "four billing cycles."

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.)**

Jan. 14, 2013
Date


LUCY ARMENDARIZ
Judge of the State Bar Court

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 January 14, 2013, 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:

DAVID M. SPIEKER
SPIEKER LAW OFFICE
744 MILBANK DR
MODESTO, CA 95357

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

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

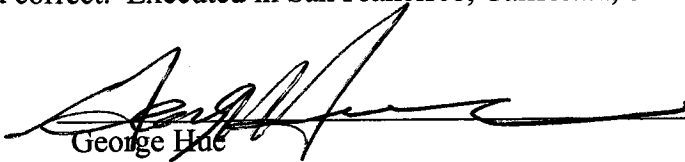
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

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

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

Donald Steedman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 14, 2013.


George Hue
Case Administrator
State Bar Court