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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336 Bar # 117910	Case Number(s): 10-O-02584-RAP 10-O-06705-RAP Inv. # 11-O-11489 Inv. # 11-O-12311	For Court use only <div style="font-size: 2em; font-weight: bold;">FILED</div> <div style="font-size: 1.2em; font-weight: bold;">JUL 20 2011 AC</div> <div style="font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
Counsel For Respondent David Cameron Carr 530 B Street; Ste. 1410 San Diego, CA 92101 (619) 696-0526 Bar # 124510	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of: JAMES THOMAS BENTSON Bar # 140800 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 7, 1989.
- (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.



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: three billing cycles following the effective date of the Supreme Court order. (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 Stipulation Attachment, page 12.

- (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 Stipulation Attachment, page 12.
- (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. See Stipulation Attachment, page 13.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent has no prior record of discipline in nearly 16 years of practice prior to the misconduct herein. See Stipulation Attachment, page 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one (1) 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 (1) 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 sixty (60) 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: provides to the Office of Probation proof of (1) passage of the Multistate Professional Responsibility Examination, administered by the National Conference of Bar Examiners, and (2) attendance at a session of Ethics School and passage of the test given at the end of the session.

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:

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

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES THOMAS BENTSON

CASE NOS.: 10-O-02584-RAP; 10-O-06705-RAP; Inv. # 11-O-11489; Inv. # 11-O-12311

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on March 3, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS FOR CASE NO. 10-O-02584-RAP:

1. In February 2005, Louise Morris ("Morris") hired Respondent to seek return of a security deposit for commercial real estate which a company owned by Morris had vacated. Respondent filed a lawsuit on March 25, 2005, and the lessor filed a demurrer and a cross-complaint for damages on April 6, 2005. Respondent informed Morris of the filings. He filed a general denial to the cross-complaint, but did not respond to the demurrer. On June 3, 2005, the demurrer was sustained as to two causes of action with leave to amend. Respondent did not file an amended complaint thereafter. The next two years were spent in discovery related to the cross-complaint and the causes of action that had survived the demurrer.

2. On June 20, 2007, the lessor filed a motion for summary adjudication of the complaint against the lessor. Respondent did not oppose it and did not inform Morris of the motion. The motion was granted on September 18, 2007, leaving only the cross-complaint against Morris and her company. Respondent did not inform Morris of the dismissal of the complaint.

3. On April 29, 2008, Respondent failed to appear at the trial setting conference for the cross-complaint. Trial was set for July 18, 2008, and the lessor's counsel served notice on Respondent. Respondent failed to notify Morris and failed to appear for trial. On September 25, 2008, judgment was entered against Morris and her company for \$186,205 plus attorneys' fees and costs of \$53,472 and was served on Respondent. Respondent failed to notify Morris of the judgment for \$239,677.

4. Morris heard nothing about the judgment until she was notified on August 14, 2009 of a judgment lien recorded against her for \$239,677. On August 15, 2009, Morris gave Respondent a copy of the recorded lien and asked for an explanation. Respondent falsely replied that he was unaware of the judgment, but would investigate and report back to her. Morris did not hear from Respondent for five weeks, when he reported that he was still investigating.

5. During the next six weeks, Morris left many voice mail messages requesting a status report, but Respondent did not reply until October 29, 2009. Respondent then reported that he would file a motion to set aside the judgment, but he never did so.

6. On May 3, 2010, and on June 1, 2010, the State Bar sent written requests to Respondent to provide a written response to allegations made by Morris to the State Bar. Respondent did not reply to either letter. Respondent did not participate in this case until he served a late Response to the Notice of Disciplinary Charges on April 11, 2011.

CONCLUSIONS OF LAW FOR CASE NO. 10-O-02584-RAP:

7. Respondent repeatedly or recklessly failed to perform legal services with competence by his failures to oppose the demurrer, oppose the motion for summary adjudication, appear for trial, and move to have the judgment set aside on grounds of his neglect, and he thereby willfully violated rule 3-110(A) of the California Rules of Professional Conduct.

8. Respondent failed to keep his client reasonably informed of significant developments in a matter for which he had agreed to provide legal services by his failures to inform Morris of dismissal of the complaint, the date set for trial, and the entry of judgment, and he thereby willfully violated section 6068(m) of the Business and Professions Code.

9. Respondent failed to cooperate and participate in a disciplinary investigation when he failed to respond to the State Bar's letters of May 3, 2010 and June 1, 2010, and he thereby willfully violated section 6068(i) of the Business and Professions Code.

FACTS FOR CASE NO. 10-O-06705-RAP:

10. On November 3, 2004, Joni Alexander ("Alexander") hired Respondent to pursue a disability claim against CIGNA Group Insurance ("CIGNA"), under a disability insurance policy issued to her employer for the benefit of employees. Alexander had collected disability benefits for more than one year when the payments were terminated on September 22, 2004 due to recent medical examinations. Alexander and Respondent signed a contingency fee agreement providing for a fee of 33 percent of any recovery, and defining the legal services to include a trial and judgment.

11. On December 14, 2004, Respondent filed an appeal with CIGNA, and thereafter participated in the appeal by providing medical records and arguments to CIGNA's reviewers. Alexander received two medical examinations in 2005, two medical examinations in 2006, and two surgeries in 2006, but none of these indicated inability to return to work.

12. On August 17, 2007, CIGNA issued a formal denial of benefits after the appeal, and notified Respondent of Alexander's right to file a federal lawsuit under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132. Respondent did not notify Alexander of this loss of the appeal, nor of her right to file a federal lawsuit. Respondent did no more work on Alexander's case.

13. In January 2009 and on April 20, 2009, Alexander sent Respondent letters requesting a status report. On July 20, 2009, Alexander sent Respondent a written request to mail her file to her home. On July 29, 2009, Alexander sent Respondent a letter notifying him that she had hired new

counsel and requesting that he send her file to the new counsel. Respondent did not reply to any of the four letters from Alexander.

14. In August 2009, Alexander's new counsel made three requests to Respondent for the client's file. Respondent then sent only part of the file to the new counsel. On August 24, 2009, the new counsel sent a written request for documents which were not in the file but were referenced by other documents in the file. Respondent did not reply. The new counsel then obtained the missing documents from CIGNA.

15. On August 9, 2010, and on August 27, 2010, the State Bar sent written requests to Respondent to provide a written response to allegations made by Alexander to the State Bar. Respondent did not reply to either letter. Respondent did not participate in this case until he served a late Response to the Notice of Disciplinary Charges on April 11, 2011.

CONCLUSIONS OF LAW FOR CASE NO. 10-O-06705-RAP:

16. Respondent intentionally or recklessly failed to perform legal services with competence by his failure to either file a lawsuit under ERISA, or to advise Alexander of why he would not do so, and he thereby willfully violated rule 3-110(A) of the California Rules of Professional Conduct.

17. Respondent failed to keep Alexander reasonably informed of significant developments in a matter for which he had agreed to provide legal services by his failures to inform Alexander of CIGNA's denial of her appeal and her right to file a federal lawsuit under ERISA, and he thereby willfully violated section 6068(m) of the Business and Professions Code.

18. Respondent failed to respond promptly to Alexander's reasonable status inquiries of January 2009 and April 20, 2009, and he thereby willfully violated section 6068(m) of the Business and Professions Code.

19. Respondent failed to promptly release to Alexander, at her request after termination of his employment on July 29, 2009, all of her papers and property, and he thereby willfully violated rule 3-700(D)(1) of the California Rules of Professional Conduct.

20. Respondent failed to cooperate and participate in a disciplinary investigation when he failed to respond to the State Bar's letters of August 9, 2010 and August 27, 2010, and he thereby willfully violated section 6068(i) of the Business and Professions Code.

FACTS FOR CASE NO. 11-O-11489:

21. In August 2008, Respondent was consulted by John Barra ("Barra") concerning a potential medical malpractice case against a plastic surgeon. The surgery was performed on September 8, 2005, for extensive reconstruction and microvascular surgery to the lower left leg. Barra had been seriously injured in an automobile accident and had undergone several orthopedic surgeries to restore the use of his left leg. Earlier in 2008, Barra's lower left leg had to be amputated due to a bone infection.

22. Respondent agreed to (1) protect Barra's case from the three-year statute of limitations imposed by section 340.5 of the Code of Civil Procedure, (2) investigate the case further, and (3) decide whether he would represent Barra in a lawsuit. On August 28, 2008, Respondent sent a 90-day notice of intention to commence an action for medical malpractice, as required by section 364 of the Code of Civil Procedure. The doctor and his insurance company denied liability.

23. Respondent found no medical evidence to support a medical malpractice case, and he informed Barra that he would not file a lawsuit. However, Respondent prepared a medical malpractice lawsuit for Barra in pro per, so that the filing deadline of November 26, 2008 could be met.

24. Barra did not file the lawsuit until December 11, 2008, and did not complete service of process for 13 months. It was filed in San Diego County Superior Court as case no. 37-2008-00097853-CU-MM-CTL and was entitled "John R. Barra v. Mark Mofid, M.D." On March 1, 2010, the defendant filed a demurrer. Respondent then agreed to substitute into the case on behalf of Barra, and did so on April 20, 2010. On August 26, 2010, after a series of pleading disputes, the defendant filed a Motion for Summary Judgment ("MSJ") to be heard on October 1, 2010.

25. Effective September 1, 2010, the State Bar placed Respondent on administrative inactive status for failure to complete his Minimum Continuing Legal Education ("MCLE") requirements. Respondent received timely notice of his inactive status. On November 5, 2010, he was restored to active membership status.

26. On September 15, 2010, Respondent filed an ex parte application to have the MSJ hearing continued until October 22, 2010. On September 22, 2010, Respondent appeared in court for the ex parte hearing, and his motion was granted. On October 12, 2010, Respondent filed his opposition to the MSJ. On October 22, 2010, Respondent appeared for the hearing on the MSJ. Summary judgment was granted on the grounds of untimely filing of the complaint and also on grounds of no medical evidence of malpractice by Dr. Mofid.

27. Also in October 2010, while on inactive status, Respondent made two appearances in San Diego County Superior Court for client Cornelius Wynberg in two criminal matters. On October 18, 2010, Respondent appeared for Wynberg's arraignments in case nos. CD228308 and CD228472. On October 27, 2010, he appeared at readiness hearings for the two cases.

CONCLUSIONS OF LAW FOR CASE NO. 11-O-11489:

28. Respondent maintained a legal action which did not appear to him to be legal or just when he substituted into the case as attorney for Barra, when Respondent knew or should have known that the lawsuit was untimely filed and was not supported by any medical evidence, and he thereby willfully violated section 6068(c) of the Business and Professions Code.

29. Respondent engaged in the unauthorized practice of law in violation of section 6125 of the Business and Professions Code by his filing of documents in court on September 15, 2010 and October 12, 2010, and by his appearances in court hearings on September 22, October 18, October 22, and October 27, 2010, all while on inactive State Bar membership status. In all six instances, Respondent held himself out as entitled to practice law, and he thereby violated section 6126 of the Business and Professions Code. His violations of sections 6125 and 6126 were failures to support the

laws of the State of California, and he thereby willfully violated section 6068(a) of the Business and Professions Code.

FACTS FOR CASE NO. 11-O-12311:

30. On March 18, 2010, the Kern County Public Guardian filed a Petition for Temporary Conservatorship of the Person and Estate of Leon Francies, Sr. (Kern County Superior Court Case No. S-1501-PB-59803.) On March 29, 2010, Gina Roberson ("Roberson"), daughter of Mr. Francies, hired Respondent to represent Mr. Francies in the pending conservatorship proceedings, and to assist her in becoming the conservator. They signed a written fee agreement whereby Roberson would pay Respondent \$185 per hour for his services.

31. On April 7, 2010, Respondent filed an objection on behalf of Mr. Francies to the appointment of the Public Guardian as conservator, and requested that Roberson be appointed. The Public Guardian agreed to her appointment, and the probate court appointed Roberson as temporary conservator of the person and estate of Mr. Francies on June 21, 2010.

32. Effective September 1, 2010, the State Bar placed Respondent on administrative inactive status for failure to complete his Minimum Continuing Legal Education ("MCLE") requirements. Respondent received timely notice of his inactive status. On November 5, 2010, he was restored to active membership status.

33. On September 20, 2010, Roberson brought Mr. Francies to Respondent's office for a telephonic status conference with the court. Roberson, as temporary conservator, had her own counsel who also appeared telephonically. After consultation with all counsel, including the Public Guardian as petitioner, the court set a trial date of February 7, 2011 for appointment of a permanent conservator. Respondent did not inform the court, the two other attorneys, or his client of his inactive status.

34. On September 30, October 27, and November 2, 2010, Respondent made telephone calls to the Public Guardian seeking agreement that Roberson be appointed as permanent conservator, but no agreement was made. On October 11, 2010, Respondent discussed financial reports and trial evidence with Roberson's counsel.

35. On December 7, 2010, the court held a compliance hearing for Roberson's attorney to explain why no inventory and appraisal and interim accounting had been filed. Roberson's attorney was allowed to withdraw, and Roberson was placed in pro per. The court issued an Order to Show Cause to be heard on January 12, 2011, on the issue of suspending Roberson as conservator of the estate for failing to make the financial reports and failing to collect rents on properties owned by Mr. Francies.

36. On December 7, 2010, after the court hearing, Respondent offered to substitute into the case as counsel for Roberson, as temporary conservator, if she would (1) sign a waiver for any conflict of interest between herself and her father, (2) agree that Respondent had earned \$34,134.25 for his legal services to the conservatee through December 7, 2010, (3) sign a promissory note for \$34,134.25 at 10 percent interest per year starting on December 7, 2010, specifying that payments would be made by the conservatorship estate and would be due upon sale of any of six parcels of real estate, and (4) give Respondent a lien on the six parcels of real estate for payment of the \$34,134.25 plus accrued interest.

37. On December 9, 2010, Roberson and Mr. Francies signed both the waiver of conflict of interest and a document entitled "Promissory Note," which purported to fix the value of Respondent's services as of December 7, 2010, but also to give Respondent a lien on six listed parcels of real estate located in Kern County, California. The promissory note and lien purported to apply only to the earned fee of \$34,134.25 and not to any fee earned after December 7, 2010.

38. Both the waiver of conflict of interest and the "Promissory Note" were invalid because Mr. Francies, as conservatee, lacked the legal capacity to sign either document. Respondent did not provide any legal services to Roberson and did not attempt to perfect the lien.

39. On January 12, 2011, the probate court removed Roberson as temporary conservator of the estate and replaced her with the Public Guardian. On February 7, 2011, Respondent filed a petition for court approval for his fees earned to date.

CONCLUSIONS OF LAW FOR CASE NO. 11-O-12311:

40. Respondent engaged in the unauthorized practice of law in violation of section 6125 of the Business and Professions Code by his court appearance on September 20, 2010, his telephone calls to the Public Guardian on September 30, October 27, and November 2, 2010 seeking appointment of Roberson as the permanent conservator, and his discussion of the case on October 11, 2010 with Roberson's counsel, all while on inactive State Bar membership status. In each of the foregoing events, Respondent held himself out as entitled to practice law while on inactive status, in violation of section 6126 of the Business and Professions Code. His violations of sections 6125 and 6126 were failures to support the laws of the State of California, and he thereby willfully violated section 6068(a) of the Business and Professions Code.

41. Respondent entered into an agreement for and charged an illegal fee when, without court approval, he obtained Roberson's promise to pay him \$34,134.25 from the conservatorship estate, and he thereby willfully violated rule 4-200(A) of the California Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES:

1. **Significant Harm to Client.** The client in case no. 10-O-02584-RAP had a default judgment entered against her for \$239,677, but did not learn of it until more than 10 months later. Respondent took no action to get the default judgment set aside. [Standard 1.2(b)(iv).]
2. **Multiple Acts of Wrongdoing.** Respondent committed eleven acts of misconduct in four client matters. The acts of misconduct constituted seven different types of wrongdoing. [Standard 1.2(b)(ii).]

MITIGATING CIRCUMSTANCES:

1. **No Prior Discipline.** Although the misconduct herein is serious, Respondent has no prior record of discipline since being admitted to the practice of law on June 7, 1989. [Standard 1.2(e)(i).]

2. **Physical Disability.** Medical records have been produced from two neurologists who treated Respondent between 2007 and 2010 for Parkinson's Disease, for which they prescribed the drug "Requip." Some users of Requip experience side effects of confusion and hallucinations. One of the doctors diagnosed "memory dysfunction as a side effect of Requip" in June 2007. Both doctors periodically examined Respondent and adjusted his medications. Both doctors are prepared to testify that Respondent's acts of misconduct during 2007 through 2010 were probably related to the side effects of Requip, which resulted in confusion and poor memory. On April 7, 2011, Respondent was taken off of Requip, and "clearer thinking" was observed at Respondent's next medical evaluation on April 20, 2011. [Standard 1.2(e)(iv).]

SUPPORTING AUTHORITY:

Standards

Standard 2.4(b) requires a reproof or suspension for willfully failing to perform services in an individual matter not demonstrating a pattern of misconduct, or for wilfully failing to communicate with a client, depending upon the extent of the misconduct and the degree of harm to the client.

Case Law

In *King v. State Bar* (1990) 52 Cal.3d 307, the material facts were quite similar to those here. In one case, attorney King abandoned a meritorious personal injury case, causing the client to lose her cause of action. The client sued King for malpractice and obtained a default judgment for \$84,000, which King did not pay. In a second case, King substituted into a probate case as attorney for the executor, and then did nothing for 32 months before he was fired. He failed to communicate properly with both clients and he was unreasonably late in returning both files. There was one mitigating factor of no prior discipline in 14 years of State Bar membership, and one aggravating factor of serious harm to the client who lost the \$84,000.

The California Supreme Court imposed an actual suspension of three months. The major difference between *King* and this case is that King's client did not cause her personal injury but lost \$84,000 because of King's malpractice, whereas Respondent's client presumably did cause damage to her leased property (based on the evidence produced at the unopposed trial), and Respondent's malpractice lost her day in court and lost the opportunity to negotiate a more favorable debt to the landlord.

In *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, attorney Greenwood was found culpable of allowing a personal injury lawsuit to be dismissed due to his failure to appear at a status conference. He failed to notify the client of the dismissal, and failed to cooperate in the State Bar's investigation. In a second matter, the lawsuit was dismissed because Greenwood failed to comply with multiple orders compelling responses to discovery. Greenwood failed to communicate with the client and the State Bar. Four months past the deadline, he filed a motion to set aside the dismissal. There were no mitigating factors

and there were aggravating factors of harm to the clients and failure to appear in the State Bar Court proceedings. The Review Department recommended an actual suspension of 90 days.

Respondent caused much less serious harm to his clients than did attorney King, and he has strong mitigation when compared with attorney Greenwood. The two cases support an actual suspension of less than 90 days for Respondent.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was June 23, 2011.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 27, 2011, the costs in this matter are \$5,945.00. Respondent further acknowledges that, should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

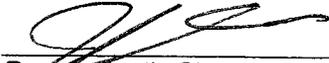
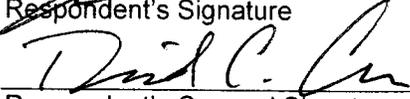
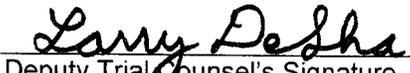
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In the Matter of: JAMES THOMAS BENTSON	Case number(s): 10-O-02584-RAP; 10-O-06705-RAP; 11-O-11489 11-O-12311
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SIGNATURE OF THE PARTIES

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.

June <u>27</u> , 2011 Date	 Respondent's Signature	James Thomas Bentson Print Name
June <u>28</u> , 2011 Date	 Respondent's Counsel Signature	David Cameron Carr Print Name
June <u>29</u> , 2011 Date	 Deputy Trial Counsel's Signature	Larry DeSha Print Name

(Do not write above this line.)

In the Matter of: JAMES THOMAS BENTSON	Case Number(s): 10-0-02584-RAP; 10-O-06705-RAP; Inv. #11-O-11489; Inv. #11-O-12311
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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:

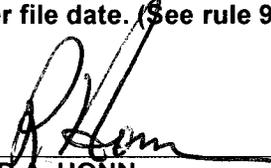
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 2 re payment of disciplinary costs, delete "three billing cycles following the effective date of the Supreme Court order." and add "2013, 2014 and 2015."

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

7/19/11


RICHARD A. HONN
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 Los Angeles, on July 20, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

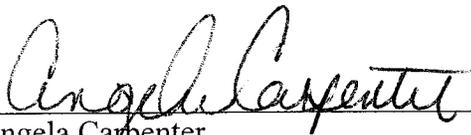
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C CARR
LAW OFFICE OF DAVID C CARR
530 B ST STE 1410
SAN DIEGO CA 92101

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

LARRY DESHA, Enforcement, Los Angeles

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



Angela Carpenter
Case Administrator
State Bar Court