

**State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION**

<p>Counsel For The State Bar</p> <p>Katherine Kinsey State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 213-765-1503</p> <p>Bar # 183740</p>	<p>Case Number(s): 10-O-04424 11-O-10374 11-O-13230</p>	<p>For Court use only</p> <p>FILED OCT -6 2011 <i>YSC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel For Respondent</p> <p>Paul J. Virgo 9909 Topanga Blvd. #282 Chatsworth, CA 91311 (310) 666-9701</p> <p>Bar # 67900</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Emmanuel Fomukong Fobi</p> <p>Bar # 210764</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 15, 2000.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (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: 2012, 2013. (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 or a separate attachment entitled "Prior Discipline."
- (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.

(Effective January 1, 2011)

Stayed Suspension

(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. In or about February 2010, Respondent suffered heart problems and other health concerns that caused him to be admitted into the hospital. As a result, Respondent states that he temporarily turned over the handling of his office affairs to his office manager. Although Respondent signed the checks that were issued from his trust account used to pay personal expenses, he relied on his office manager to prepare the checks.
- (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.

(Do not write above this line.)

- (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.

Respondent has cooperated with the State Bar in investigating and resolving these matters at an early stage.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of Two (2) 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 Two (2) 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: .
- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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:**

(Do not write above this line.)

In the Matter of: Emmanuel F. Fobi	Case Number(s): 10-O-04424, 11-O-10374, 11-O-13230
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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
Mark Reid	\$ 2,230	November 30, 2010
Raquel Rodriguez	\$10,000	January 5, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than .

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
Raquel Rodriguez	\$2,500	Quarterly
Mark Reid	\$ 2,230	First Quarter. Interest to be paid in the Second Quarter

- 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: Emmanuel F. Fobi

CASE NUMBER(S): 10-O-04424; 11-O-10374; 11-O-13230

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.

Case No. 10-O-04424 (State Bar Investigation)

FACTS:

1. At all times relevant herein, Respondent maintained a trust checking account at Washington Mutual designated account no. xxxxxxxx538 ("trust account").¹
2. At all times relevant herein, Respondent was the only authorized signatory on the trust account.
3. In March 2010, Respondent issued, or caused to be issued, several checks from his trust account for the payment office expenses, including checks to Copy Max Systems, AT&T and Explorer Insurance Services.
4. In April 2010, Respondent issued, or caused to be issued, several checks from his trust account for the payment office expenses, including checks to Attorneys To Go, RSETech and several checks to his office employees for payroll expenses.
5. In April 2010, Respondent issued, or caused to be issued, several checks from his trust account for personal expenses, including checks AT&T Mobility, Lexus Financial Services and Wells Fargo Dealer Services.

CONCLUSIONS OF LAW:

By retaining earned fees in his trust account and by using funds in his trust account to pay personal and office expenses, Respondent commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of Rules of Professional Conduct, rule 4-100(A).

¹ The account number has been partially redacted due to privacy concerns.

Case No. 11-O-10374 (Complainant: Mark Reid)

FACTS:

1. On October 11, 2009, Senate Bill 94, prohibiting the collection of advanced fees for mortgage loan modification services, became operative.
2. On or about November 30, 2010, Mark Reid employed Respondent for loan modification services and paid Respondent \$2,230 in advanced attorney's fees.
3. As a result, Respondent collected advanced fees for mortgage loan modifications services for a client after October 11, 2009.

CONCLUSIONS OF LAW:

By collecting advanced fees for loan modifications after October 11, 2009, Respondent willfully violated Business and Professions Code section 6106.3.

Case No. 11-O-13230 (Complainant: Raquel Rodriguez)

FACTS:

1. On October 11, 2009, Senate Bill 94, prohibiting the collection of advanced fees for mortgage loan modification services, became operative.
2. In April 2010, Raquel Rodriguez ("Rodriguez") employed Respondent to obtain a loan modification on her behalf. Between April 2010 and May 2010, Rodriguez paid Respondent \$3,000 in advanced attorney's fees, and between October 2010 and January 2011, Rodriguez paid Respondent and additional \$7,000 in advanced attorney's fees.
3. As a result, Respondent collected advanced fees for mortgage loan modifications services for a client after October 11, 2009.
4. On November 1, 2010, Respondent filed a civil action on Rodriguez's behalf against her lender. Respondent obtained a temporary injunction to stop the foreclosure of Rodriguez's home but was unable to obtain a permanent injunction.
5. After employing Respondent's services, Rodriguez communicated with Respondent's assistants, Aurora Becerra and Hector, regarding her matter, and they informed her that the case was being handled. However, on or about March 9, 2011, Rodriguez's condominium was sold without notice to her. Respondent later obtained an agreement from Rodriguez's lender
6. In April 2011, Rodriguez obtained a copy of her file from Respondent's office. In the file, there were letters that had been submitted to Rodriguez's lender stating that Rodriguez's earned income from renting rooms out of her home. Rodriguez maintains the information in the letters was not true, and she was not aware that the letters had been submitted to her lender. Respondent contends that he was not aware that the letters had been submitted to Rodriguez's lender and any letters created and submitted by

his staff were done without his consent. Respondent states that the employees in question are no longer employed in his office.

CONCLUSIONS OF LAW:

By collecting advanced fees for loan modifications after October 11, 2009, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to supervise his office employees in the Rodriguez matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was September 22, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide, at Standard 2.2(b), for a minimum actual suspension of three months irrespective of mitigating circumstances for the commission of a violation of rule 4-100, Rules of Professional Conduct, which does not result in the willful misappropriation of entrusted funds or property. Reported cases of discipline based on commingling include: *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47 (Six months actual suspension for commingling violations and violation of Business and Professions Code, section 6106 for issuance of NSF checks); *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113 (60 days actual suspension for commingling and negligent misappropriation); *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615 (Six months actual suspension for Respondent with prior record of discipline).

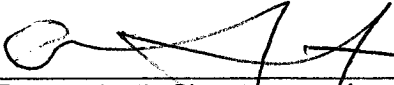
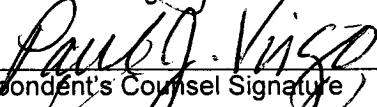
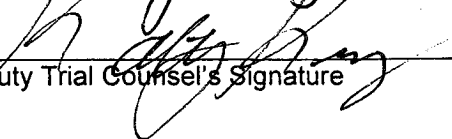
Here, Respondent's no record of discipline, his mitigating factors and his cooperation with the State Bar to resolve these matters by stipulation supports the imposition of a stayed suspension.

(Do not write above this line.)

In the Matter of: Emmanuel F. Fobi	Case number(s): 10-O-04424; 11-O-10374; 11-O-13230
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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>9/22/11</u> Date	 Respondent's Signature	<u>Emmanuel F. Fobi</u> Print Name
<u>9/22/2011</u> Date	 Respondent's Counsel Signature	<u>Paul J. Virgo</u> Print Name
<u>9/22/2011</u> Date	 Deputy Trial Counsel's Signature	<u>Katherine Kinsey</u> Print Name

(Do not write above this line.)

In the Matter of: Emmanuel F. Fobi	Case Number(s): 10-O-04424; 11-O-10374; 11-O-13230
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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.

On page 2 of the stipulation, in paragraph A. (8), which relates to costs, delete the membership years, "2012, 2013." And, in their place, insert the following membership years: "2013, 2014."

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.)**

10/6/11
Date


Judge of the State Bar Court **DONALD F. MILES**

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 October 6, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION

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:

**PAUL JEAN VIRGO
9909 TOPANGA BLVD #282
CHATSWORTH, CA 91311**

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

KATHERINE KINSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 6, 2011.



Tammy Cleaver
Case Administrator
State Bar Court