


<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT BROOKE A. SCHAFER, #194824 1149 So. Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1000</p>	<p>Case number(s) 01-0-4941 01-0-4944</p> <p>kwiktag® 031 975 040</p> 	<p>(for Court's use)</p> <p>FILED</p> <p>APR 10 2003 <i>He</i></p> <p>STATE BAR COURT CLERKS OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel for Respondent JAMES D. GOING III 12100 E. Imperial Hwy., #211 Norwalk, CA 90650 Telephone: (562) 465-0122</p> <p>In Pro Per</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of JAMES D. GOING III</p> <p>Bar # 123649</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 6, 1986
(date)
- (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 and order consist of // pages.
- (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) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
2004, 2005
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure).
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances (for suspension, see Standards for Attorney Suspensions 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 under "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.
- (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 to the extent of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:

D. Discipline

1. Stayed Suspension.

A. Respondent shall be suspended from the practice of law for a period of TWELVE (12) months

- 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- iii. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of TWENTY-FOUR (24) months which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

A. Respondent shall be actually suspended from the practice of law in the State of California for a period of THIRTY (30) days

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
- 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 shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, 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) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. The first report would cover less than 30 days, that report shall 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 shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 shall provide to the Probation Unit 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.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) Other conditions negotiated by the parties: See attached restitution re: lien payment
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of

JAMES D. GOING III

A Member of the State Bar

Case Number(s):

01-O-4941 - 01-O-4944

Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ___ days/ 12 months ___ years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 3 hours of MCLE approved courses in law office management, ~~attorney-client relations and/or general legal ethics.~~ This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.) (This MCLE requirement may only be satisfied through live course work)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES D. GOING III

CASE NUMBERS: 01-O-4941 & 01-O-4944

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct:

Investigation no. 01-O-4941 (c/w Marable)

1. On January 9, 2001, Margaret Marable hired Respondent to file a Chapter 13 bankruptcy on an emergency basis in order to prevent foreclosure on her home.
2. On January 18, 2001, Respondent filed a Voluntary Petition for Chapter 13 bankruptcy on Marable's behalf. Respondent submitted the petition without the requisite schedules and attachments, as Marable had not provided all the information he needed to proceed regarding her creditors. As a result, the bankruptcy court ordered Respondent to file a Chapter 13 plan, schedules and Statement of Financial Affairs no later than February 2, 2001.
3. Also on January 18, 2001, Respondent informed Marable's mortgage lenders of her Chapter 13 filing and requested that his client's property be removed from the sale set for January 19, 2001.
4. Respondent prepared a Statement of Financial Affairs, which Marable signed on January 22, 2001. Respondent asserts that he instructed his secretary to file this document, but it did not get filed with the bankruptcy court until February 15, 2001. It was not filed timely.
5. On February 5, 2001, Respondent filed the Chapter 13 plan. It, too, was late.
6. As the Statement of Financial Affairs and the Chapter 13 plan were both filed late, on February 21, 2001, the bankruptcy court filed an Order and Notice of Dismissal of Marable's petition. As part of its order the court prohibited Marable from filing a new bankruptcy petition for 180 days.

7. Respondent knew of the court's order dismissing Marable's petition. In response Respondent states he prepared a Motion for Relief from Order Prohibiting the Filing of a Chapter 13 Bankruptcy Petition. He prepared a new Chapter 13 filing package and claims he instructed his office staff to file it with the court, but he claims once again his staff failed to do so until March 5, 2001.
8. On March 6, 2001, Marable was notified by creditors that the foreclosure on her property would continue. On March 8, 2001, Marable's property was sold at foreclosure sale. On March 12, 2001, the bankruptcy court officially closed Marable's matter.
9. After foreclosure, Respondent tried to assist Marable in regaining her property by negotiating possible recovery of the property with the purchaser, and by trying to put Marable in contact with a lender specializing in bad credit mortgages. Marable was not able to recover her home, however.

Conclusion of Law, investigation no. 01-O-04941

By failing to timely submit the Statement of Financial Affairs, by failing to timely submit the Chapter 13 plan, by failing to timely submit the Motion for Relief, and by failing properly to supervise office staff to ensure that documents were timely filed, Respondent recklessly and repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Investigation no. 01-O-04944 (c/w Vassallo)

1. On August 7, 2000, Alexandra Vassallo employed Respondent to handle a marriage dissolution matter for Vassallo, who had recently been served with a petition for divorce by her husband.
2. On August 9, 2000, the attorney for Vassallo's husband, Daniel Chesnut, served Vassallo with Interrogatories and a Demand for Inspection of Documents, which were to be answered or produced by September 10 and 11, 2000, respectively. Vassallo promptly answered the discovery, but Respondent did not forward it to Chesnut
3. Discovery was not provided timely, and on September 27, 2000, Chesnut filed a Motion to Compel Compliance with Discovery and an accompanying request for sanctions, for Vassallo's failure to provide timely discovery. Respondent received this motion to compel and request for sanctions.

4. On November 14, 2000, the court awarded Chesnut \$350.00 in attorney fees associated with his motion to compel discovery. The court ordered the money paid by Vassallo by December 1, 2000. Respondent was present at the November 14, 2000, court hearing and presented his argument against attorneys' fees.
5. Respondent asserts that he believed the \$350.00 sanction would be satisfied due to a separate financial arrangement he had made with Chesnut. Accordingly, he assured Vassallo that he would pay the sanction and that she would not have to pay it under the circumstances. The sanction was not satisfied, however, and in April 2000 Chesnut placed a lien on Vassallo's property for failure to pay the \$350.00 sanction. To date, Respondent has not paid off the lien on his client's behalf.

Conclusion of Law, investigation no. 01-O-04944

By failing to timely respond to discovery requests which resulted in monetary sanctions against his client and by failing to ensure that the sanctions would be paid either by his arrangement with Chesnut or by paying it himself, Respondent recklessly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

MITIGATING CIRCUMSTANCES - Cont'd from page 3.

No Prior Discipline, Standard 1.2(e)(i). Respondent has been a member of the bar since May 6, 1986, and has no prior discipline.

AUTHORITIES SUPPORTING DISCIPLINE

Standards

Standard 2.4(b). Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Caselaw

Butler v. State Bar (1986) 42 Cal.3d 323. Attorney failed to obtain adequate information to probate an estate, failed to communicate with the executor of the estate, misrepresented that the estate was proceeding satisfactorily in probate and improperly prolonged the estate proceeding. Attorney had

been a member of the bar for approximately 30 years and had one prior reproval. Court imposed 60 days actual suspension.

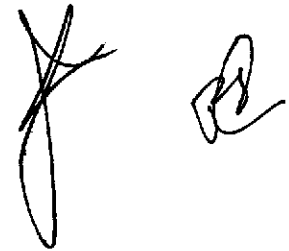
Wren v. State Bar (1983) 34 Cal.3d 81. Attorney failed to perform for 22 months, failed to communicate with his client, failed to return a file or an advance fee and misrepresented the status of the case to the client and the State Bar. Attorney received 45 days actual suspension; no prior discipline.

RULE 133 NOTICE OF PENDING MATTERS

The notice referred on page one, section A(6), was made by letter to Respondent dated February 20, 2003.

RESTITUTION CONDITION (cont'd from page 5, paragraph 10):

Respondent agrees that within ninety (90) days of the effective date of the discipline herein, he shall report to the Probation Unit of the State Bar that he either (1) paid off Vassallo's lien and ensured its satisfaction and removal, or (2) paid Vassallo directly \$350.00 plus any interest that may have accrued. Respondent shall retain proof of this payment for the entire period of probation and provide proof to the probation department upon request.

Handwritten signature and initials in black ink.

3/10/03
Date

James D. Going III
Respondent's signature

JAMES D. GOING III
print name

Date

Respondent's Counsel's signature

print name

3/21/03
Date

Brooke A. Schaffer
Deputy Trial Counsel's signature

BROOKE A. SCHAFER
print name

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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

4/8/03
Date

[Signature]
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 August 28, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING ACTUAL SUSPENSION (Amended page 10), filed
April 10, 2003**

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

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

**JAMES D. GOING III
12100 E. IMPERIAL HWY., #211
NORWALK, CA 90650**

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

BROOKE SCHAFER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 28, 2003.



Tammy R. Cleaver
Case Administrator
State Bar Court