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State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>Agustin Hernandez Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1713</p> <p>Bar # 161625</p>	<p>Case Number (s) 11-O-11689 12-N-11897</p>	<p>(for Court's use)</p> <p>FILED</p> <p>SEP 12 2014 <i>YJC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Drago Charles Baric 1536 W. 25th Street, #255 San Pedro, CA 90732 (310) 868-9722</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 105383</p> <p>In the Matter Of: DRAGO CHARLES BARIC</p> <p>Bar # 105383</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 3, 1982.**
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

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- (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 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case **Case No. 07-O-13120, et al.**
 - (b) Date prior discipline effective **July 15, 2011**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, sections 6068(m) [failure to communicate with clients; three counts], and 6068(i) [failure to cooperate with the State Bar's investigation; five counts]; and rules 3-110(A) [failure to perform legal services with competence; two counts], 3-700(D)(2) [failure to refund unearned fees; two counts], 4-100(A) [commingling personal funds with trust funds and using client trust account to pay personal expenses], 4-100(B)(1) [failure to notify client of receipt of settlement funds], and 4-100(B)(3) [failure to render an accounting], Rules of Professional Conduct.**
 - (d) Degree of prior discipline **Respondent was suspended for two years, stayed, and placed on three years of probation with one year of actual suspension.**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
 - (a) **State Bar Court case # of prior case Case No. 08-O-14008, et al.**
 - (b) **Date prior discipline effective December 30, 2011**
 - (c) **Rules of Professional Conduct/State Bar Act Violations: rules 3-700(D)(2) [failure to refund unearned fees], 4-100(A) [commingling personal funds with trust funds and using client trust account to pay personal expenses], and 4-100(B)(3) [failure to render an accounting], Rules of Professional Conduct.**
 - (d) **Degree of prior discipline Respondent was suspended for three years, stayed, and actually suspended for 18 months, and until he makes restitution of \$5,000, and until the court grants a motion to terminate suspension.**

(See Attachment, pages 7 and 8.)

- (2) **Dishonesty:** Respondent's misconduct was intentional, 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.

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- (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. **(See Attachment, page 8.)**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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.

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- (11) **Good Character:** Respondent's extraordinarily 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:

Pretrial Stipulation. (See Attachment, page 8).

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10. At no time did Respondent release Sanchez's file to him, or otherwise arrange to have Sanchez pick up the file.

11. Respondent did not provide any legal services of value for the \$700 in attorney's fees that Sanchez paid Respondent to prepare and file the judgment.

12. Respondent did not earn any portion of the \$700 in attorney's fees that Sanchez paid him to prepare and file the judgment.

13. To date, Respondent has failed to provide to Sanchez with a refund of any portion of the \$700 in attorney's fees that Sanchez paid to Respondent to prepare and file the judgment.

14. On March 22, 2011, the State Bar opened an investigation pursuant to a complaint filed by Sanchez.

15. On June 27, 2011, a State Bar Investigator mailed a letter to Respondent at his official membership records address regarding Sanchez's complaint. The State Bar Investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Sanchez complaint. Respondent received the June 27, 2011 letter.

16. At no time did Respondent provide a written response to the allegations of misconduct in Sanchez's complaint, or otherwise cooperate in the State Bar's investigation.

CONCLUSIONS OF LAW:

17. By constructively withdrawing from his employment with Sanchez and failing to inform Sanchez of his intent to withdraw from employment, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

18. By failing to return Sanchez's telephone messages, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

19. By not releasing the client file to Sanchez, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

20. By failing to provide to Sanchez with a refund of any portion of the \$700 in attorney's fees that Sanchez paid to Respondent for preparing and filing the judgment, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

21. By not providing a written response to the investigator's letter regarding the allegations in Sanchez's complaint or otherwise cooperate in the investigation of Sanchez's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent, in willful violation of Business and Professions Code, section 6068(i).

Case No. 12-N-11897 (State Bar Investigation)

FACTS:

22. On November 30, 2011, the Supreme Court of the State of California issued Order No. S196655 ordering Respondent comply with rule 9.20, California Rules of Court, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court Order. On November 30, 2011, the Clerk of the Supreme Court of the State of California properly served upon Respondent a copy of the order. Respondent received the order.

23. Rule 9.20, subdivision (a) requires that in all pending matters, Respondent notify all clients, co-counsel, the courts, and opposing counsel or the adverse party of Respondent's suspension from the practice of law. Respondent must also deliver or make available to clients their files and property, and must refund any unearned attorney's fees. Rule 9.20, subdivision (c) requires that Respondent file with the clerk of State Bar Court a declaration of compliance with subdivision (a) of rule 9.20 within 40 days after the effective date of the order.

24. The Supreme Court Order became effective on December 30, 2011, 30 days after it was issued.

25. Pursuant to the Supreme Court Order, Respondent was required to file a declaration of compliance with rule 9.20 with the clerk of the State Bar Court by February 8, 2012.

26. Respondent failed to timely file a declaration of compliance as required by rule 9.20 subdivision (c).

27. On May 25, 2012, Respondent attempted to file an untimely declaration of compliance with rule 9.20 by sending it via email to the Office of Probation of the State Bar of California.

28. On May 30, 2012, the Office of Probation of the State Bar of California replied to Respondent's May 25, 2012 email, and informed Respondent that he needed to file his declaration of compliance with rule 9.20 with the clerk of the State Bar Court.

29. Thereafter, Respondent did not file a declaration of compliance with rule 9.20 with the clerk of the State Bar Court until November 1, 2013.

CONCLUSIONS OF LAW:

30. By failing to timely file a declaration of compliance with rule 9.20 with the clerk of the State Bar Court by February 8, 2012, Respondent willfully violated California Rules of Court, rule 9.20.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has been disciplined on two prior occasions. Effective July 15, 2011, Respondent was suspended for two years, stayed, placed on three years of probation with a one-year actual suspension. Respondent committed misconduct in five client matters between January 6, 2007, and June 4, 2008. Respondent failed to perform legal services with competence [two counts], failed to refund unearned fees [two counts], commingled personal funds with

trust funds and used his client trust account to pay personal expenses, failed to notify client of receipt of settlement funds, failed to render an accounting, failed to communicate with clients [three counts], and failed to cooperate with the State Bar's investigation [five counts].

Effective December 30, 2011, Respondent was suspended for three years, stayed, and actually suspended for 18 months and until he makes restitution of \$5,000, and until the court grants a motion to terminate suspension. Respondent committed misconduct in two client matters between August 1, 2008, and December 31, 2008. Respondent failed to refund unearned fees, failed to provide an accounting, commingled personal funds with trust funds, and used his client trust account to pay personal expenses.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent committed six acts of misconduct in two separate matters.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation of facts prior to trial, thereby preserving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
11-O-11689	One	Business and Professions Code, section 6103

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In the Matter of: DRAGO CHARLES BARIC	Case Number(s): 11-O-11689; 12-N-11897
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ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

9/9/14

Date



DONALD F. MILES
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 September 12, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSION OF LAW

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:

**DRAGO CHARLES BARIC
1140 HIGHLAND AVE # 102
MANHATTAN BEACH, CA 90266**

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

**TERRIE GOLDADE, Probation Dept., Los Angeles
AGUSTIN HERNANDEZ, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 12, 2014.



Tammy Cleaver
Case Administrator
State Bar Court