

PUBLIC MATTER

FILED

JUN - 6 2017

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case Nos. 11-O-11689; 12-N-11897-DFM
)	(Cons.)
DRAGO CHARLES BARIC,)	
)	DECISION AND ORDER SEALING
A Member of the State Bar, No. 105383.)	CERTAIN DOCUMENTS
_____)	

Introduction¹

In this original disciplinary proceeding, respondent Drago Charles Baric (Respondent) was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As Respondent has now successfully completed the ADP, the court recommends that Respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that Respondent be placed on probation for four years subject to certain conditions, including a minimum two-year period of actual suspension (with credit given for the period of inactive enrollment under section 6233) and until he presents proof satisfactory to this court of his rehabilitation, fitness to practice and present learning and ability in the general law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Pertinent Procedural History

On December 29, 2011, the Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case No. 11-O-11689. The matter was assigned to the Honorable Pat McElroy, who, on April 16, 2012, entered Respondent's default in the case and ordered him enrolled ineligible to practice, based on his failure to participate in the disciplinary proceeding despite receiving adequate notice of it.² On December 26, 2012, the State Bar filed a Petition for Disbarment After Default, requesting that Respondent be disbarred. When Respondent continued not to appear in the proceeding, the court filed a decision on May 2, 2013, recommending disbarment together with an order of involuntary inactive enrollment.

On June 3, 2013, Respondent filed a Motion to Vacate or Set Aside Default, arguing that his default had resulted from excusable neglect resulting from his depression. On June 17, 2013, the State Bar filed an opposition to the motion. On July 9, 2013, the court filed an order denying the motion to set the default aside, concluding that the motion had not been timely filed as required by rule 5.83(D).

On June 23, 2013, Respondent filed a motion for reconsideration, again requesting that the court set aside his default and presenting medical evidence supporting his contention that he was mentally disabled due to his depression during the time preceding his request for relief from the default. On August 12, 2013, the court granted Respondent's motion; set aside both the

² Respondent was already ineligible to practice law at the time he was ordered ineligible because of his default in this case. He had first been ordered actually suspended for one year, effective July 15, 2011, by the Supreme Court in case No. 07-O-13120. He was then ordered actually suspended, effective December 30, 2011, by the Supreme Court for a minimum of 18 months and until he makes restitution to a former client. (State Bar Court case No. 08-O-14008, etc.)

default and the prior order of involuntary inactive enrollment;³ and directed the case administrator to file Respondent's proposed response to the NDC. At a status conference on September 9, 2013, the court scheduled the pending case to commence trial on January 16, 2014, with a two-day trial estimate.

On October 2, 2013, the State Bar filed an NDC against Respondent in case No. 12-N-11897, alleging that Respondent had failed to comply with a Supreme Court order that he comply with rule 9.20, subdivisions (a) and (c) within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. This new case was also assigned to Judge McElroy. On October 23, 2013, Respondent filed a response to the NDC in the case. Thereafter, on November 1, 2013, Respondent filed a request to participate in the State Bar Court's Alternative Discipline Program (ADP).

On November 18, 2013, Judge McElroy, after consolidating the two pending cases, then referred the matter to the Hon. Richard Honn, then a judge of the Hearing Department of this court, for evaluation of whether Respondent should be referred to an ADP Program Judge for evaluation for inclusion in the ADP. On November 27, 2013, Judge Honn recommended that the cases be referred to a Program Judge. As a result, on December 4, 2013, the matter was referred to the undersigned as ADP Program Judge for assessment of whether Respondent should be accepted into the ADP.

³ Because Respondent in August 2013 had still not made the restitution ordered in case No. 08-O-14008, he remained actually suspended despite the vacating of the 2012 orders enrolling him ineligible to practice because of his default. That actual suspension has continued up to the present time. Because his period of actual suspension as a result of that prior discipline has now continued for more than two years, he is now also required as a result of the December 2011 discipline to present proof to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law before he will be relieved of that suspension. As of the date of this decision, Respondent has not yet satisfied that requirement, although a petition by him to do so has now been filed and is scheduled for hearing on July 20, 2017.

An initial status conference was held with the undersigned on December 13, 2013. At that time, Respondent was ordered to submit the required nexus evidence and the parties were ordered to meet-and-confer regarding the required stipulation regarding misconduct.

On January 10, 2014, the State Bar and Respondent executed and lodged with this court the required Stipulation Re Facts and Conclusions of Law (Stipulation).

On January 29, 2014, Respondent executed a Participation Plan with the Lawyer Assistance Program (LAP).

On March 17, 2014, Respondent also executed and submitted to the court a declaration sufficiently establishing a nexus between his mental health issues and his prior misconduct in these matters.

During the months of April and May, while the court was assessing Respondent's compliance with the requirements of LAP, the parties submitted briefs regarding the high and low disciplines to be adopted by the court as part of Respondent's participation in the ADP.

On May 19, 2014, the court indicated its decision regarding the high/low discipline, with the "high" discipline being disbarment and the "low" discipline (to be recommended in the event that Respondent was accepted into the ADP but completed it successfully) being the discipline recommended in this decision, to wit: that Respondent be suspended for three years, stayed, and be placed on probation for four years with conditions of probation including actual suspension for a minimum of two years and until Respondent both makes restitution to a former client and shows proof satisfactory to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law.

On September 8, 2014, after Respondent had accepted the above high/low discipline and the required contract documents had been prepared and reviewed by the parties, Respondent

executed the Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program (Contract).

On September 9, 2014, Respondent was accepted into the ADP. At the same time, this court formally approved both the previously submitted Stipulation regarding culpability and the Confidential Statement of Alternative Dispositions and Orders, setting forth the agreed high/low disciplines. In addition, the court executed an order pursuant to section 6233, enrolling Respondent inactive effective September 9, 2014, and until further order of the court.⁴

On May 18, 2015, this court concluded that Respondent's restitution obligation had been satisfied.

On February 13, 2017, Respondent was granted "Successful Completion" of the LAP Program by the LAP Evaluation Committee.

On March 10, 2017, the court issued an order finding that Respondent had successfully completed the ADP.

Respondent, who had been placed on inactive enrollment, effective September 9, 2014, has remained inactive from that date through and including the present date. Based on Respondent's successful completion of both the LAP and the ADP, the court recommends that Respondent be given full credit for the entire minimum two-year period of his actual suspension.

This consolidated matter was submitted for decision on March 10, 2017.

Findings of Fact and Conclusion of Law

Culpability Findings

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein.

⁴ As previously noted, Respondent was already suspended at the time of this order because of a prior disciplinary order of the Supreme Court.

Case No. 11-O-11689 (Sanchez Matter)

In case No. 11-O-11689, Respondent stipulated to willfully violating: (1) rule 3-700(A)(2) by failing to take reasonable steps to avoid foreseeable prejudice to his client upon termination of employment; (2) section 6068, subdivision (m), by failing to respond promptly to reasonable client status inquiries in a matter in which Respondent had agreed to provide legal services to the client; (3) rule 3-700(D)(1) by failing to promptly release to his client all the client's papers and property after termination of Respondent's employment and upon request by the client for the case file; (4) rule 3-700(D)(2) by not refunding any part of the unearned advanced fee he had received from his client; and (5) section 6068, subdivision (i), by failing to cooperate in a disciplinary investigation by not providing a written response to the State Bar letter requesting Respondent's response to the allegations in the client's complaint against him.

Case No. 12-N-11897 (Violation of Rule 9.20 Obligation)

Respondent stipulated to willfully violating rule 9.20 of the California Rules of Court by failing to timely file a declaration of compliance with rule 9.20 with the clerk of the State Bar Court as he was ordered to do.

Aggravating Circumstances

Prior Discipline

In aggravation, Respondent has two prior records of discipline, summarized briefly as follows:

First Discipline

In Supreme Court case No. S190894 (State Bar Court case Nos. 07-O-13120, et al.), effective July 15, 2011, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to conditions of probation including that he be actually suspended for the first year of probation. Respondent was found

culpable in that matter of willfully violating rule 3-700(D)(2) [failure to return unearned fees] (two counts); rule 3-110(A) [failure to act with competence] (two counts); rule 4-100(A) [commingling]; rule 4-100(B)(1) [failure to notify client of receipt of client funds]; rule 4-100(B)(3) [failure to provide accounting]; section 6068, subdivision (m) [failure to communicate with client] (three counts); and section 6068, subdivision (i) [failure to cooperate in State Bar investigation] (five counts).

Second Discipline

In Supreme Court case No. S196655 (State Bar Court case Nos. 08-O-14008, et al.), effective December 30, 2011, Respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years, with conditions including that he be actually suspended for a minimum of 18 months and until he makes restitution and the State Bar Court grants a motion to terminate his suspension. (Former Rules Proc. of State Bar, rule 205.) Respondent was found culpable in that proceeding of willfully violating rule 3-700(D)(2) [failure to return unearned fees] (two counts); rule 4-100(A) [commingling]; and rule 4-100(B)(3) [failure to provide accounting].

These prior records of discipline constitute an aggravating factor. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁵ standard 1.5(a).) **Multiple Acts of Misconduct**

Respondent stipulated that his current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.⁶ This is also an aggravating factor. (Std. 1.5(b).)

⁵ All further references to standard(s) or std. are to this source.

⁶ While the court does find multiple acts of misconduct as an aggravating circumstance in this consolidated matter, the court does not find a pattern of misconduct.

Mitigating Circumstances

Cooperation

Respondent entered into a stipulation of facts as well as culpability prior to trial, saving the State Bar Court time and resources. (Std. 1.6(e); see also *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071,1079; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [mitigative credit given for entering into a stipulation as to facts and culpability]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Completion of LAP/ADP

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that the emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he/she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) At the time that Respondent engaged in misconduct in the instant matter, he was suffering from mental health issues, and the court has found a nexus between Respondent's mental health issues and his misconduct in this matter.

Respondent has successfully participated in the LAP and the ADP. Respondent's successful completion of these programs qualifies as the "meaningful and sustained period of rehabilitation" required by the Supreme Court to provide clear and convincing evidence that Respondent no longer suffers from the mental health issues leading to the misconduct underlying this matter. (*Harford v. State Bar* (1990) 52 Cal.3d 93,101; *In re Billings* (1990) 50 Cal.3d 358,

367.) Accordingly, his successful completion of the ADP and LAP programs is a mitigating circumstance. (Std. 1.6(d).)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

In determining the appropriate discipline to impose in this matter, the court considered standards 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8(b), 2.5(c), 2.8(b), and 2.15. Case precedents considered included *Shapiro v. State Bar* (1990) 51 Cal.3d 251, *Bercovich v. State Bar* (1990) 50 Cal.3d 116, and *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131.

Because Respondent has now successfully completed the ADP and LAP programs, this court recommends that the Supreme Court impose the “low” level of discipline, specified by the court to the parties in 2014, accepted by Respondent at the time that he entered into the ADP, but now modified by the court to reflect certain events taking place while Respondent was in the ADP. As set forth more fully below, this discipline includes an order that Respondent be suspended for three years, stayed, and that he be placed on probation for four years with conditions of probation including actual suspension for a minimum of two years (with credit for the period of his inactive enrollment beginning on September 9, 2014 and continuing until the filing of this decision) and until Respondent shows proof satisfactory to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law.⁷

Recommendations

Actual Suspension/Probation

For all of the above reasons, it is recommended that **Drago Charles Baric**, State Bar No. 105383, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for four years, with the following conditions:

1. Respondent must be suspended from the practice of law for a minimum of the first two years of probation (with credit given for the period of inactive enrollment, which commenced on September 9, 2014) and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the

⁷ While he was in the ADP, Respondent made full restitution to Martin Sanchez, as was originally required by the “low” discipline. As a result, that requirement is not included in this recommended order.

general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)⁸

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. He must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

⁸ On May 8, 2017, Respondent filed a petition for reinstatement to active status in which he seeks to present proof of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Case No. 17-V-02674.) The hearing of the petition is currently scheduled for July 20, 2017. In the event he is successful in that proceeding, the court recommends that he be given credit for having satisfied the standard 1.2(c)(1) requirement imposed by the court's order in this matter.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.⁹

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

⁹ At the time the high/low disciplines were articulated, the conditions of probation included a requirement that Respondent complete the Lawyers Assistance Program. This condition was included to cover the possibility that Respondent would be graduated from the ADP prior to completing the LAP. Since he has now completed both, the inclusion of this condition is unnecessary.

California Rules of Court, Rule 9.20, Requirement Not Recommended

It is not recommended that Respondent be ordered to comply with California Rules of Court, rule 9.20, because Respondent has been actually suspended since 2011 and was required to and did comply with rule 9.20 at the time he was enrolled ineligible to practice in September 2014 pursuant to section 6233.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) of the Rules of Procedure of the State Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure. It is further ordered that protected and sealed material will only be disclosed to (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to

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prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: June 6, 2017



DONALD F. MILES
Judge of the State Bar Court

(Do not write above this line.)

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

Counsel For The State Bar Agustin Hernandez Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1713 Bar # 161625	Case Number (s) 11-O-11689 12-N-11897	(for Court's use) <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.1em;">SEP 12 2014 <i>YJC</i></div> <div style="text-align: center; font-size: 0.9em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent Drago Charles Baric 1536 W. 25th Street, #255 San Pedro, CA 90732 (310) 868-9722 Bar # 105383	<div style="font-size: 1.5em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter Of: DRAGO CHARLES BARIC Bar # 105383 A Member of the State Bar of California (Respondent)	Submitted to: Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 **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."

CBD
1/10/14

- (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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ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DRAGO CHARLES BARIC

CASE NUMBERS: 11-O-11689 and 12-N-11897

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. 11-11689 (Complainant: Martin Sanchez)

FACTS:

1. In early 2010, Martin Sanchez employed Respondent to represent him in a child custody matter pending in Los Angeles County Superior Court. Sanchez paid Respondent \$1,950 in attorney's fees for Respondent's legal services.
2. On March 10, 2010, a trial was held in the child custody matter. Respondent and Sanchez appeared at trial which proceeded as uncontested because Sanchez's former spouse failed to appear. On this date, the court ordered that a judgment be prepared and submitted to the court for signature and filing.
3. On March 10, 2010, following the trial in the child custody matter, Respondent told Sanchez that he needed to pay Respondent an additional \$700 in attorney's fees to prepare and file the judgment. Thereafter, Sanchez paid Respondent \$700 in attorney's fees to prepare and file the judgment.
4. At no time did Respondent prepare and file a judgment on behalf of Sanchez.
5. From March 2010 through August 2010, Sanchez called Respondent's office numerous times and left messages for Respondent inquiring about the status of the judgment in the child custody matter. Respondent received the messages. Respondent did not return Sanchez's messages.
6. In late August 2010, Sanchez prepared the judgment himself with the assistance of a court facilitator. In September 2010, Sanchez filed the judgment in pro per.
7. By failing to prepare and file the judgment in the child custody matter, Respondent constructively withdrew from his employment with Sanchez.
8. Respondent did not inform Sanchez of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Sanchez.
9. From August 2010, through November 2010, Sanchez left several telephone messages for Respondent asking him for a copy of Sanchez's file. Respondent received the messages.

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

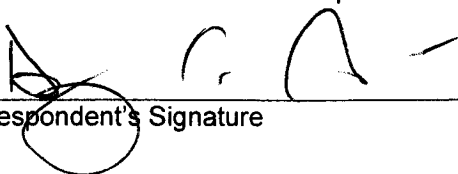
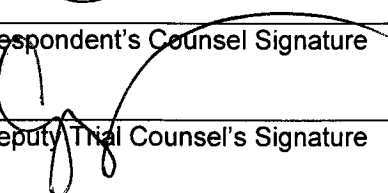
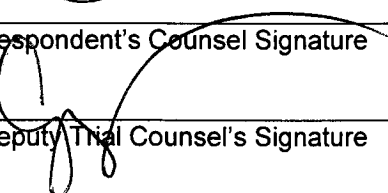
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In the Matter of: DRAGO CHARLES BARIC	Case number(s): 11-O-11689; 12-N-11897
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SIGNATURE OF THE PARTIES

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>1-10-14</u> Date	 Respondent's Signature	<u>DRAGO CHARLES BARIC</u> Print Name
<u>January 10, 2014</u> Date	 Respondent's Counsel Signature	<u>AGUSTIN HERNANDEZ</u> Print Name
	 Deputy Trial Counsel's Signature	

(Do not write above this line.)

In the Matter of: DRAGO CHARLES BARIC	Case Number(s): 11-O-11689; 12-N-11897
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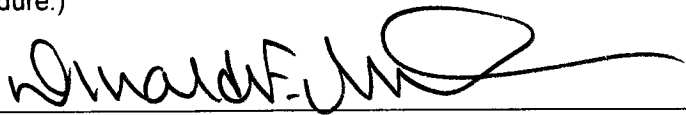
ALTERNATIVE DISCIPLINE PROGRAM ORDER

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

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 June 6, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS 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:

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 6, 2017.



Mazie Yip
Case Administrator
State Bar Court