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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar William Todd Deputy Trial Counsel 1149 Hill St Los Angeles, CA 90015 213-765-1491 Bar # 259194	Case Number(s): 11-O-14124-RAP	For Court use only <div style="text-align: center;"> FILED MAR 22 2012 <i>YK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent David Estel Allen, Jr. P.O. Box 2755 Vista, CA 92085 760-429-5094 Bar # 73848	PUBLIC MATTER	
In the Matter of: DAVID ESTEL ALLEN, JR. Bar # 73848 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 2, 1977.
- (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 10 pages, not including the order.

(Effective January 1, 2011)



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☒ 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: (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 06-O-12456
 - (b) ☒ Date prior discipline effective November 21, 2007
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rule 3-700(A)(2); Business and Professions Code section 6068(i)
 - (d) ☒ Degree of prior discipline Public Reprimand
 - (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.

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- (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 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.
- (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.

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(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 must be suspended from the practice of law for a period of one year.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of one year, 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.

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

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID ESTEL ALLEN, JR. SBN #73848

CASE NUMBER(S): 11-O-14124

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on December 8, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

B. FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified sections of both the *Business and Professions Code* and the *Rules of Professional Conduct*.

Case No. 11-O-14124

FACTS:

1. On June 26, 2009, a complaint was filed on behalf of Brenda Rinsky ("Rinsky") in the Superior Court of California, County of Los Angeles ("Superior Court"), title *Brenda Rinsky v. Manuel Arias Jr.*, LASC Case NO. LC086000 ("*Rinsky v. Arias*").
2. On March 23, 2010, Rinsky hired Respondent to represent her in *Rinsky v. Arias*. Rinsky agreed to pay Respondent \$1,500 in advance attorney fees immediately, with \$500 a month in advance attorney fees to follow.
3. Between November 2, 2010 and May 9, 2011, Rinsky sent approximately six letters and emails to Respondent stating that she was concerned about Respondent's failure to perform and requested an accounting of all fees. Respondent received the letters and emails, but did not provide the accounting.
4. Between November 2, 2010 and May 9, 2011, Rinsky or her husband called and left numerous messages for Respondent on his voice message system identifying themselves, providing their contact information, and requesting that Respondent provide an accounting for the advance attorney fees that Rinsky had paid Respondent. Respondent received the messages, but did not provide the accounting.

5. On August 8, 2011 and August 29, 2011, a State Bar Investigator mailed letters to Respondent at his official member records address requesting that Respondent respond in writing to a complaint by Rinsky. The complaint involved Respondent's representation of Rinsky, including Respondent's failure to account for the advance attorney fees that Rinsky paid. Respondent received the letters, but did not provide a response to the State Bar's investigation.

CONCLUSIONS OF LAW:

1. By failing to provide an accounting of all client funds entering Respondent's possession despite his client's numerous requests, Respondent failed to render appropriate accounting to a client regarding all of the client's funds coming into Respondent's possession in violation of *Rules of Professional Conduct* rule 4-100(B)(3).
2. By failing to respond to the letters sent to Respondent by State Bar Investigators on August 8, 2011 and August 29, 2011, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in violation of *Business and Professions Code* section 6068 (i).

C. DISMISSALS

The State Bar respectfully requests the Court to dismiss the following alleged violations in the interests of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
11-O-14124	One	<i>Rules of Professional Conduct</i> section 4-200 (A)
11-O-14124	Two	<i>Business and Professions Code</i> section 6068 (m)

D. PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was March 6, 2012.

E. AUTHORITIES SUPPORTING DISCIPLINE.

The analysis of what is the appropriate discipline begins with the Standard for Attorney Sanctions as reaffirmed by *In Re Silvertown* (2005) 36 Cal. 4th 81. Though they are not binding on the Supreme Court and are not a "fixed formula," the standards do promote consistent and uniform application of discipline in disciplinary proceedings. The standards also promote the purpose of discipline, enunciated in Standard 1.3 as "the protection of the public, the courts and the legal profession" as well as "the maintenance of high professional standards by attorneys and the preservation of confidence in the legal profession." The "presumptively appropriate level of discipline" for any misconduct is as set forth in the standards. See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.

1. Specific Disciplinary Recommendations Described by the Standards

Standard 2.6 provides that culpability of a member of a violation of any of the following provisions of the *Business and Professions Code* shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:...(a) Sections 6067 and 6068....

Here, Respondent stipulates to a violation of *Business and Professions Code* section 6068(i), for which standard 2.6 mandates suspension as a minimum discipline.

Standard 2.10 provides that the culpability of a member for violation of any provision of the *Business and Professions Code* or any *Rule of Professional Conduct* not specified in the Standards shall result in reproof or suspension, according to the gravity of the offense or harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in Standard 1.3.

Here, Respondent stipulates to a violation of *Rules of Professional Conduct* rule 4-100(B)(3), for which standard 2.10 mandates reproof as a minimum discipline.

Standard 1.6(a) provides that if two or more acts of misconduct are found in the same proceeding, as is the case here, the sanction imposed shall be the more or most severe of the different applicable sanctions. Therefore, the minimum discipline here is suspension, as described in Standard 2.6.

2. The Effect of Respondent's Prior Discipline

Standard 1.6(b) provides that a greater or lesser degree of discipline than the appropriate sanction prescribed by these standards shall be imposed or recommended, depending on the net effect of the aggravating and mitigating circumstances, if any.

Similarly, Standard 1.7(a), in relevant part, provides a when "a member has a record of one or more prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

In this instance, Respondent's record includes a private reproof effective November 21, 2007, which is an aggravating circumstance consistent with Standard 1.6(b) and a "prior imposition of discipline" consistent with Standard 1.7(a). There are no mitigating circumstances.

E. COSTS

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of March 1, 2012, the estimated prosecution costs in this matter are approximately \$3,269. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of:
DAVID ESTEL ALLEN, JR.

Case number(s):
11-O-14124

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.

March 13, 2012

Date



Respondent's Signature

David Estel Allen, Jr.

Print Name

Date

March 13, 2012

Date

Respondent's Counsel Signature



Deputy Trial Counsel's Signature

Print Name

William Todd

Print Name

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In the Matter of:
DAVID ESTEL ALLEN, JR.

Case Number(s):
11-O-14124

STAYED SUSPENSION ORDER

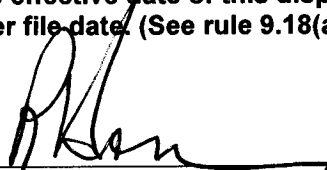
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ 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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

3/21/12


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 22, 2012, I deposited a true copy of the following document(s):

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

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


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

DAVID ESTEL ALLEN, JR.
P.O. BOX 2755
VISTA, CA 92085

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

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 22, 2012.



Angela Carpenter
Case Administrator
State Bar Court