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State Bar Court of California Hearing Department Los Angeles REPROVAL			PUBLIC MATTER
Counsel For The State Bar Eli D. Morgenstern The State Bar of California Office of the Chief Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1334 Bar # 190560	Case Number(s): 11-O-17381	For Court use only <div style="text-align: center;"> FILED APR 04 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent Charles W. Brower 4280 Latham St Ste E Riverside, CA 92501 Bar # 242460	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: Charles W. Brower Bar # 242460 A Member of the State Bar of California (Respondent)			

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 June 1, 2006.
- (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.



- (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 (public reproof).
 - ☐ Case ineligible for costs (private reproof).
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: three (3) billing cycles following the effective date of the discipline here in. See page 9 for further discussion regarding costs. (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.
- (9) • The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:

- (d) ☐ Degree of prior discipline
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (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. See page 8 for further discussion regarding candor and cooperation.
- (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) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of one (1) year.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ 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.
- (4) ☒ 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.

- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation. 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 the reprobation during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (6) ☐ 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 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 monitor.
- (7) ☒ 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 conditions attached to the reprobation.
- (8) ☒ 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 Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ 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.
- (10) ☒ 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 of the effective date of the reprobation.

☐ No MPRE recommended. Reason:

- (11) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☒ Financial Conditions

See page 8 for further discussion regarding Financial Conditions.

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Charles Wayne Brower

CASE NUMBER: 11-O-17381

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

The parties waive any variance between the Notice of Disciplinary Charges filed on January 24, 2012, and the facts and/or conclusions of law contained in this stipulation and waive the issuance of an Amended Notice of Disciplinary Charges

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-O-17381 (Complainant: John Dupnock)

Facts:

1. In or about 1989, Anna Demuth ("Demuth") prepared a will and trust. The will named John Dupnock ("Dupnock"), Demuth's brother, as the administrator and the Demuth trust as the beneficiary. Dupnock and Stella McKishin ("McKishin"), Demuth's sister, were two of the beneficiaries of the trust.
2. On June 5, 2009, Demuth prepared a hand-written will. This will named Koke Ahankoob, Demuth's friend and caretaker, as the administrator.
3. On May 26, 2010, Demuth died at the age of 96. Prior to her death, Demuth lived in California for approximately 49 years.
4. On July 19, 2010, Dupnock and McKishin, New Jersey residents, following an internet search, employed Respondent to contest Demuth's hand-written will on the grounds of undue influence and to investigate whether Demuth was a victim of potential elder abuse.
5. On July 20, 2010, Dupnock paid Respondent \$2,500 as an advanced fee for Respondent's legal services.
6. On July 20, 2010, Cynthia Chapman ("Chapman"), a New Jersey resident and McKishin's daughter, on behalf of Dupnock and McKishin, mailed Respondent a letter and enclosed with it copies of Demuth's original will and trust and the hand-written will. Subsequently, Dupnock provided Respondent with copies of Demuth's birth and death certificates.

7. On August 19, 2010, Respondent sent Chapman an e-mail stating, among other things, that the court refused to permit him to lodge the copy of the original will. Consequently, Respondent stated that he intended to commence a traditional probate proceeding.

8. On September 21, 2010, Respondent sent a letter to Dupnock via facsimile requesting that Dupnock provide updated addresses for the beneficiaries listed in Demuth's trust, their respective ages, and whether they are deceased. On September 22, 2010, Dupnock sent Respondent a facsimile with the information regarding the beneficiaries that Respondent had requested in his September 21, 2010 letter.

9. After September 21, 2010, Respondent did not communicate with Dupnock, McKishin, or Chapman.

10. On October 7, 2010, Dupnock and McKishin sent Respondent a letter via facsimile inquiring about the status of Demuth's probate proceeding. Respondent received the facsimile. Respondent did not respond to it.

11. On November 11, 2010, Chapman, on behalf of Dupnock and McKishin, sent Respondent a letter via facsimile and e-mail expressing her frustration with Respondent's services and lack of communication. Chapman asked that Respondent contact Dupnock immediately. Respondent received the facsimile and e-mail. Respondent did not respond to it.

12. At no time did Respondent commence a probate proceeding with respect to Demuth's estate.

13. By ceasing all communication with Dupnock, McKishin, and Chapman, New Jersey residents, after on or about September 21, 2010, Respondent constructively terminated his employment with Dupnock and McKishin.

14. Dupnock and McKishin did not employ new counsel after Respondent ceased communicating with them in September 2010.

Conclusions of Law:

By the foregoing conduct, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients, in wilful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

DISMISALS.

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-17381	TWO THREE	Rules of Professional Conduct, rule 3-700(D)(2) Business and Professions Code § 6068(i)

///

FINANCIAL CONDITION.

1. Restitution

Within thirty (30) days of the effective date of the discipline herein, Respondent must pay restitution to June Dupnock, the widow of John Dupnock, in the sum of \$2,500 and provide satisfactory proof of payment to the Office of Probation. Mr. Dupnock passed away on March 7, 2012.

If the Client Security Fund ("CSF") has reimbursed Ms. Dupnock for all or any portion of the \$2,500, Respondent must pay CSF in the amount paid, plus applicable interest and costs.

MITIGATING CIRCUMSTANCES.

1. Emotional Difficulties

During the time period that Respondent committed the misconduct herein, he was experiencing depression which was caused, in significant part, by untreated issues surrounding Respondent's history of Attention-deficit hyperactivity disorder ("ADHD").

In May 2011, Respondent began treatment with a psychiatrist specializing in ADHD and its emotional ramifications. Respondent's counseling for both ADHD and depression has helped him understand the causes of his depression and to cope with the symptoms. Respondent's emotional difficulties and his rehabilitation are mitigating circumstances. (Std. 1.2(e)(iv).)

2. Candor and Cooperation

Respondent is entitled to significant mitigation for entering into this stipulation. (Std. 1.2(e)(v).)

OTHER FACTORS IN CONSIDERATION.

Respondent has advised the State Bar that he intends to seek full-time employment in the restaurant industry, and does not plan to return to full-time legal work.

AUTHORITIES SUPPORTING DISCIPLINE.

1. Standards

Standard 1.3 of the Standards For Attorney Sanctions For Professional Misconduct ("Standards") provides that, "[T]he primary purposes of disciplinary proceedings . . . are the protection of the public, the courts[,] and the legal profession; the maintenance of high professional standards by attorneys[;] and the preservation of public confidence in the legal profession."

The appropriate level of discipline for the culpability of a member who violates rule 3-700(A)(2) of the Rules of Professional Conduct is not specified in the Standards. Under Standard 2.10, the appropriate level of discipline for a violation of a rule not specified in the Standards is a reproof or suspension, according to the gravity of the offense or the harm, if any, to the victim, with due regard for the purposes of imposing discipline set forth in Standard 1.3.

In consideration of the totality of the facts and circumstances surrounding Respondent's misconduct, the parties respectfully submit that Respondent's misconduct warrants a reproof.

2. Case Law

In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the Review Department ordered an attorney public reproof, who in a single client matter, failed to refund promptly an unearned legal fee and failed to take reasonable steps to avoid prejudice to a client prior to withdrawal from representation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7) was March 13, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of March 13, 2012, the prosecution costs in this matter are approximately \$3,269. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the discipline herein.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

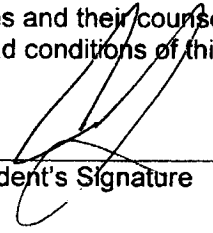
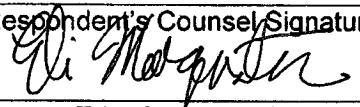
Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: Charles W. Brower	Case number(s): 11-O-17381
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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>3/21/12</u> Date	 Respondent's Signature	<u>Charles W. Brower</u> Print Name
<u>3/28/12</u> Date	 Respondent's Counsel Signature	<u>Eli D. Morgenstern</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

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In the Matter of: Charles W. Brower	Case Number(s): 11-O-17381
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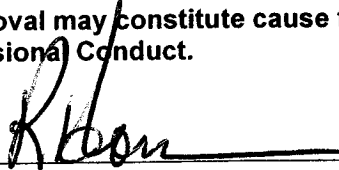
REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ 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. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 4/2/12 
The Honorable Judge 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 April 4, 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:

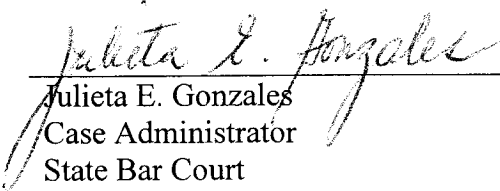
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CHARLES W BROWER ESQ
BANKRUPTCY PROFESSIONALS
4280 LATHAM ST STE E
RIVERSIDE, CA 92501

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 4, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court