

ORIGINAL

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<b>Counsel For The State Bar</b>  Kimberly G. Anderson Senior Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1083  Bar # 150359	<b>Case Number(s):</b> 11-O-17898-DFM and 12-O-14853	<b>For Court use only</b>  <b>FILED</b>  FEB 26 2013 <i>Yc</i>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<b>Counsel For Respondent</b>  Rita Morales Miranda-Morales Law Firm 1880 Century Park East, Ste. 817 Los Angeles, CA 90067 (310) 451-6222  Bar # 127115	<b>PUBLIC MATTER</b>	
<b>In the Matter of:</b> Eve S. Chesbro  Bar # 145698  A Member of the State Bar of California (Respondent)	<b>Submitted to: Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <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 January 17, 1990.
- (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 18 pages, not including the order.

(Effective January 1, 2011)

Actual Suspension



(Do not write above this line.)

- (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):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: Costs to be paid in equal amounts prior to February 1 for the three billing cycles following the effective date of the Supreme Court order. (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
  - (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.
- (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. See Stipulation Attachment at page 13.

(Do not write above this line.)

- (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 Stipulation Attachment at page 13.
- (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.

(Do not write above this line.)

(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:**

See Stipulation Attachment at page 13.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of one (1) 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:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three (3) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(Do not write above this line.)

- (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 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.

- (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 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.
- (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 probation conditions.
- (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) ☒ 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 checked="" 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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

**further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason:

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☒ **Other Conditions:** See Stipulation Attachment at pages 15-17, "Other Conditions of Probation."

(Do not write above this line.)

In the Matter of: Eve S. Chesbro	Case Number(s): 11-O-17989-DFM and 12-O-14853
-------------------------------------	--

## Financial Conditions

### a. Restitution

- ☐ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ 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.

### c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      Eve S. Chesbro

CASE NUMBER(S):                      11-O-17898-DFM and 12-O-14853

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-O-17898 (Complainant: John Tafoya)

**FACTS:**

1. In 2009, Respondent was diagnosed with osteoarthritis and an advanced deteriorated hip joint in her right hip.

2. In late February 2010, Respondent underwent the first of two hip surgeries on her right hip at Kaiser Hospital. Between February 2010 and the summer of 2010, Respondent spent a significant amount of time recovering from the surgery, with the help of her daughter. Respondent was on pain medications for approximately 3-4 months following the surgery, which caused her to be tired and to have low energy. She experienced pain and weakness in her leg and hip joint. She had extremely limited mobility in her leg and hip. During that time, Respondent was not able to go to her office regularly because her office is located on the second floor of a historical building that does not have elevator access. Respondent did some work from home with the assistance of a paralegal, but her ability to work was slowed down as she was unable to keep up with the workload.

3. On April 30, 2010, John Tafoya ("Tafoya") was terminated from his employment by his employer.

4. In the summer 2010, Respondent suffered a fall, which necessitated scheduling her for a second hip surgery on her left hip. The second surgery was scheduled to take place in September 2010.

5. On September 8, 2010, Tafoya hired Respondent to file a lawsuit against his former employer for wrongful termination and failure to pay commissions owed to Tafoya. Respondent promised Tafoya the lawsuit would be filed in approximately January 2011. Respondent advised Tafoya of her upcoming hip surgery, and that she would not be able to file the complaint until January 2011.

6. On September 8, 2010, Tafoya paid Respondent \$5,000 in advanced fees.

7. On September 21, 2010, Tafoya paid Respondent an additional \$5,000 in advanced fees.

8. In September 2010, Respondent underwent the second hip surgery on her left hip as a result of the fall. After the second surgery, Respondent was not able to go to her office at all until mid-January

2011. Respondent did work from home with the assistance of a paralegal, but her ability to work was slowed down as she was unable to keep up with the workload.

9. When Tafoya had not received a copy of the lawsuit from Respondent in January 2011, Tafoya emailed and telephoned Respondent several times in January and February 2011. On or about February 15, 2011, Respondent telephoned Tafoya and left him a voice mail message stating she expected to have the lawsuit drafted within two to four weeks.

10. On March 22, 2011, when Tafoya had not received a copy of the lawsuit from Respondent, he emailed her requesting a status update. Respondent received the email.

11. On March 23, 2011, Respondent requested a check from Tafoya in the amount of \$350 for filing fees for the lawsuit.

12. On March 24, 2011, Tafoya paid Respondent \$350 for the filing fees. Respondent never deposited them into a client trust account and instead deposited them into her operating account.

13. On March 29, 2011, Tafoya emailed Respondent and asked to review a copy of the draft complaint. Respondent received the email, but did not respond to it.

14. On April 6, 2011, Respondent emailed Tafoya and estimated she would provide him with a finalized copy of the lawsuit by mid-April 2011.

15. On April 22, 2011, and again on April 25, 2011, Tafoya emailed Respondent requesting a status update regarding reviewing the lawsuit. Tafoya stated he wanted the lawsuit filed by the end of the week, Respondent received the emails, and responded on April 25, 2011 telling Tafoya she could not discuss his case with him until the end of the week.

16. On May 17, 2011, Tafoya telephoned Respondent's office and left a message with her paralegal requesting a status update regarding his case. Respondent received the telephone message, but did not return Tafoya's call.

17. On June 1, 2011, Tafoya emailed Respondent asking for a status update. Respondent received the email. On or about June 2, 2011, Respondent emailed Tafoya and stated she was busy with other work demands, but she promised to file the lawsuit "soon."

18. On July 11, 2011, Tafoya emailed Respondent asking for a status update. On July 11, 2011, Respondent responded to the email promising to file the case by the end of July 2011.

19. On August 2, 2011, Tafoya sent Respondent an email terminating her legal services, and demanding a refund of unearned fees. Respondent received the email. Respondent did not earn any fees because she did not perform any services of value, Respondent never provided Tafoya with a completed final draft of the complaint, and Respondent never file the lawsuit on behalf of Tafoya.

20. On January 27, 2013, Respondent refunded the \$10,000 to Tafoya after he State Bar filed disciplinary charges against her in this matter.

## CONCLUSIONS OF LAW:

21. By failing to complete a final draft complaint, and by failing to file the lawsuit on behalf of Tafoya at any time between September 2010 and August 2, 2011, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

22. By failing to deposit the \$350 filing fees Tafoya had sent her on March 24, 2010 in a client trust account, Respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import competence in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

23. By failing to refund the \$10,000.00 in unearned advanced fees at any time between August 2, 2011 and January 27, 2013, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

### Case No. 12-O-14853 (Complainant: Peggy O'Brien)

## FACTS:

24. On December 18, 2009, Peggy O'Brien ("O'Brien") was terminated from her employment by her former employer.

25. On January 6, 2010, O'Brien hired Respondent to pursue investigation and negotiations with respect to an age discrimination claim against her former employer. On January 6, 2010, Respondent and O'Brien executed a written retainer agreement. The agreement expressly stated that it did not cover litigation against O'Brien's former employer and that an additional retainer agreement would be required for litigation. Respondent promised, pursuant to her written retainer agreement to provide O'Brien with itemized monthly billing statements.

26. On January 6, 2010, O'Brien paid Respondent \$4,000 in advanced fees.

27. On January 23, 2010, O'Brien sent an email to Respondent asking Respondent to help her with a related EDD claim. Respondent agreed to perform the additional work, but asked O'Brien to pay her an additional \$1,500 in advanced fees since the EDD claim was a separate but related issued to the age discrimination claim.

28. On January 27, 2010, O'Brien paid Respondent an additional \$1,500 in advanced fees.

29. Respondent performed some legal services for O'Brien in the form of negotiations with respect to an EDD claim.

30. On December 12, 2010, O'Brien sent an email to Respondent terminating her services, expressing her disappointment with Respondent's legal services, and requesting a partial refund of any unearned fees. Respondent received the letter.

31. On December 15, 2010, Respondent sent O'Brien an email urging her to reconsider terminating Respondent and stating, "You have very little left on your retainer if anything."

32. On December 15, 2010, O'Brien sent Respondent another email stating she no longer wished to pursue the claim against her former employer. Respondent received the letter. Respondent stopped performing any work on behalf of O'Brien.

33. On February 2, 2011, Respondent sent O'Brien a letter promising to return any remaining unearned fees as soon as she was able to update her billing.

34. On May 10, 2011, O'Brien sent Respondent an email asking when she could expect a refund. Respondent received the email, but did not respond to it.

35. On September 9, 2011, O'Brien sent Respondent an email asking when she could expect a refund. Respondent received the email.

36. On September 9, 2011, Respondent sent O'Brien an email promising to provide her with the finalized billing statement by the following week. But Respondent did not provide O'Brien with a billing statement.

37. On March 20, 2012, O'Brien sent Respondent an email asking when she could expect a refund. Respondent received the email.

38. On March 22, 2012, Respondent sent O'Brien an email promising to provide her with the finalized billing statement by the following week. But Respondent did not provide O'Brien with a billing statement.

39. On April 25, 2012, O'Brien sent Respondent an email asking when she could expect a refund. Respondent received the email.

40. On April 25, 2012, Respondent sent O'Brien an email asking her to be patient, but she did not provide O'Brien with a billing statement.

41. On May 10, 2012, O'Brien sent Respondent an email asking when she could expect a refund. Respondent received the email.

42. On May 11, 2012, Respondent sent O'Brien an email stating she may be able to provide O'Brien with a billing statement by the following month, but Respondent did not provide O'Brien with any accounting or billing statement.

43. On June 10, 2012, O'Brien filed a State Bar Complaint against Respondent. On August 14, 2012, and only after a State Bar Investigator had sent her a written letter, did Respondent provide O'Brien with an accounting. According to the accounting, Respondent earned all of the fees paid to her by O'Brien. As a condition of probation in this disciplinary matter, Respondent has agreed to make fee arbitration proceedings available to O'Brien at Respondent's expense and to abide by the result of any fee arbitration award.

## CONCLUSIONS OF LAW:

44. By failing to provide monthly itemized billing statements or any accounting to O'Brien between January 6, 2010 and August 14, 2012, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

## ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

### HARM:

Respondent's misconduct significantly harmed her client John Tafoya because her failure to promptly refund the \$10,000 in unearned fees to him deprived him of those funds. (Std. 1.2(b)(iv).)

### MULTIPLE ACTS OF MISCONDUCT:

Respondent committed four acts of professional misconduct in two client matters. (Std. 1.2(b)(ii).)

## ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Though the misconduct is serious, Respondent has had no prior discipline since being admitted to practice law in California in 1988. Respondent has also been a member in good standing of the District of Columbia Bar since 1975 and a member in good standing with the State Bar of Texas since 1987. Respondent is currently an inactive member of the District of Columbia and Texas Bars in good standing. Respondent has been a practicing lawyer for 37 years with no prior record of discipline. Although Standard 1.2(b)(i) provides mitigation where an attorney's misconduct is not serious and the attorney has not prior record of discipline over many years of practice, both the State Bar Court Review Department and the California Supreme Court have recognized that an attorney may be credited with mitigation for many years in practice with no prior discipline even where the misconduct is serious. (See, *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Respondent entered into a stipulation to facts, conclusions of law and disposition prior to the trial in this matter, and because of that stipulation, State Bar time and resources have been saved. (See, *Riordan*, *supra*. at p. 50.)

## AUTHORITIES SUPPORTING DISCIPLINE/DISCUSSION.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed 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." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re*

*Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing four acts of professional misconduct in two client matters. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.2(b), which applies to Respondent's violations of Rules 4-100(A) and 4-100(B)(3).

Standard 2.2(b) states:

Culpability of a member of commingling entrusted funds or property with personal property or the commission of another violation of rule 4-100 of the Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

The Court has imposed less than 90 days' actual suspension for rule 4-100 violations when appropriate. (*Sternleib v. State Bar* (1990) 52 Cal.3d 317 [30-day suspension for attorney who made numerous withdrawals from trust account for attorney's fees during a six-and-one half-month period without client authorization and for failing to render an account].) In the instant case, the rule 4-100(A) violation is based upon Respondent's failure to deposit a \$350 filing fee Mr. Tafoya had provided to her into a client trust account. There was no misappropriation of the \$350 and Respondent did refund the \$350 filing fee prior to the filing of disciplinary charges (realizing the importance of the fact that these were entrusted client funds), even though she did not promptly refund the unearned fees.

While not exactly mitigating, there is some causal connection between Respondent's medical problems and the misconduct in both cases since Respondent fell behind in her work and had problems living up to her obligations to both John Tafoya and Peggy O'Brien following her hip surgeries. However, standard 1.2(e)(iv) requires the Respondent to show that she no longer suffers from the medical difficulties or disabilities in order to get mitigation credit. Therefore, Respondent is not entitled to mitigation credit due to her medical condition. But Respondent's medical condition does provide some explanation for the reasons the misconduct occurred.

Respondent's 37 years of discipline-free law practice is entitled to significant mitigation even though the misconduct was serious and warrants deviation from the standards, and she has cooperated with the State Bar by entering into a full and complete stipulation prior to trial.

Given the fact that Respondent did not immediately refund the fees to Tafoya, and given the harm to Tafoya, some period of actual suspension is necessary and appropriate. However, on balance, given the fact that Respondent's actions were in part caused by her medical condition and given that Respondent

has no prior record of discipline in 37 years of practice and has cooperated with the State Bar in entering into a full and complete stipulation, a 30-day actual suspension, a one-year stayed suspension and three years' probation will adequately serve to protect the public and to impress upon Respondent her obligations to attend to her client's needs and to comply with her ethical obligations to her clients.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was February 1, 2013.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 1, 2013, the prosecution costs in this matter are approximately \$6,222.00. 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.

#### **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-17898	Four	Rule 4-100(B)(3), Rules of Professional Conduct

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and State Bar Client Trust Accounting School to be ordered as a condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

#### **OTHER CONDITIONS OF PROBATION**

##### **Fee Arbitration Conditions:**

##### **A. Duty to Notify Individuals of Right to Mandatory Fee Arbitration**

Within thirty (30) days of the effective date of discipline, Respondent agrees to send a letter by certified mail, return receipt requested, to the individuals set forth below and agrees to therein offer to initiate, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individuals, upon the request of any such individuals, regarding fees respondent received for representation of the former clients set forth below, unless Respondent has previously sent such a written offer to said individuals. The letter shall include the address and phone number of the Office of Probation along with a statement that the Office of Probation will be monitoring his fee arbitration conditions and may be contacted by the individual.

Peggy O'Brien  
1630 1/4 Cicaro Dr.

**B. Upon Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration**

Within forty (40) days after the effective date of discipline, Respondent agrees to provide the Office of Probation with a copy of the letters offering to initiate and participate in fee arbitration with the individuals set forth above, along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

Within sixty (60) days after the effective date of discipline, Respondent agrees to provide the Office of Probation a declaration from each of the individuals setting forth that a letter had been received from Respondent offering to initiate, pay any costs and fees associated with the fee arbitration, and participate in fee arbitration.

Respondent agrees to advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any individual set forth above within fifteen (15) days after any such request or within sixty (60) days after the effective date of discipline, whichever is later. Respondent agrees to provide the Office of Probation with any information requested to verify Respondent's compliance, including submission of any written request for fee arbitration or the submission of a declaration from any individual setting forth the date arbitration was requested.

Respondent agrees to initiate fee arbitration within fourteen (14) days of any request, including making any payment required by the organization conducting the fee arbitration. Respondent agrees to fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration with respect to any of the above individuals.

Respondent further agrees to accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent hereby agrees to abide by the arbitration award and foregoes the right to file an action seeking a trial de novo in court to vacate the award.

**C. Duty to Comply with the Arbitration Award**

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, or within sixty (60) days after the effective date of discipline, whichever is later, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent agrees to abide by any award, judgment or stipulated award of any such fee arbitrator and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty (30) days of the issuance of any such award, judgment or stipulated award.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.



**D. Obligation to Pay Restitution to the Client Security Fund.**

If the State Bar Client Security Fund has reimbursed any of the above individuals for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, respondent agrees to pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal amounts, Respondent will still be liable for interest payments to such individuals. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

**E. Waiver of Objections**

If the fee arbitration proceeding results in an award to any of the above individuals, Respondent waives any objections related to the Office of the Chief Trial Counsel, Client Security Fund or State Bar Court notification to any such individual regarding assistance in obtaining restitution or payment from the Client Security Fund or from Respondent.

**F. Effect of Failure to Comply with Fee Arbitration Conditions**

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in a motion to revoke her probation in this matter, the filing of new disciplinary charges and/or additional discipline. Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court ordering Respondent to pay back the full amount of attorneys' fees paid to Respondent by each of the individuals listed plus 10% interest from the date Respondent received the fees.

**G. Disputed Funds Must be Held in Trust**

Respondent must keep the disputed amount in a separate interest bearing trust account. If Respondent has removed the disputed amount from trust, Respondent must open a separate interest bearing trust account and deposit the disputed amount into such account within 30 days of the effective date of discipline. Respondent must provide evidence that the disputed amount of funds have remained in trust within 10 days of any request by the Office of Probation.

(Do not write above this line.)

In the Matter of:  
Eve S. Chesbro

Case number(s):  
11-O-17898-DFM and 12-O-14853

### 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>2/6/2013</u> Date	<u>Eve Chesbro</u> Respondent's Signature	<u>EVE CHESBRO</u> Print Name
<u>2/6/2013</u> Date	<u>Rita M. Morales</u> Respondent's Counsel Signature	<u>Rita M. Morales</u> Print Name
<u>2/13/13</u> Date	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>KIMBERLY G. ANDERSON</u> Print Name

(Do not write above this line.)

In the Matter of: EVE S. CHESBRO	Case Number(s): 11-O-17898-DFM and 12-O-14853
-------------------------------------	--

### ACTUAL 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:

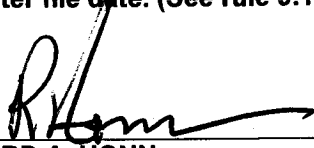
- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

On page 2, (8) Payment of Disciplinary Costs -- Add the years "2013, 2014 and 2015" after "the three billing cycles."

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

2/22/13

  
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 February 26, 2013, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

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:

**RITA M. MORALES  
MIRANDA-MORALES LAW FIRM  
1880 CENTURY PARK EAST  
STE 817  
LOS ANGELES, CA 90067**

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

**KIMBERLY ANDERSON, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 26, 2013.

  
\_\_\_\_\_  
Tammy Cleaver  
Case Administrator  
State Bar Court