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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Eli D. Morgenstern, DTC State Bar of California Office of the Chief Trial Counsel 1149 S. Hill St. Los Angeles, CA 90015-2299 (213) 765-1334</p> <p>Bar # 190560</p>	<p>Case Number(s): 11-O-18489</p>	<p>For Court use only</p> <div style="text-align: center;"> <p>FILED</p> <p>MAR 29 2012</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<p>Counsel For Respondent</p> <p>Paul Jean Virgo, Esq. 9909 Topanga Blvd., Ste. 282 Chatsworth, CA 91311 (310) 666-9701</p> <p>Bar # 67900</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of: Gary Martin Sklar</p> <p>Bar # 140580</p> <p>A Member of the State Bar of California (Respondent)</p>			

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 6, 1989.
- (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 13 pages, not including the order.



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- (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.

SEE PAGE 12 FOR FURTHER DISCUSSION REGARDING COSTS.

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 See page 10 for further discussion regarding discipline.
 - (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.

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- (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 10 for further discussion regarding candor/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. See page 11 for further discussion regarding good character.

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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 two (2) years.

- 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 two (2) years, 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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- (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 checked="" 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:**

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Law Office Management Conditions

- a. Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.

- b. Within days/ months/one (1) years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six (6) hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)

- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for two (2) year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

8. On May 14, 2007, the court in the civil matter conducted a Case Management Conference. Counsel for Costco appeared; neither Respondent nor Sanchez appeared. The Court set an OSC Re: Sanctions for Failure to Appear and continued the Case Management Conference to June 29, 2007. On May 14, 2007, counsel for Costco served Respondent with a copy of the May 14, 2007 Notice of Ruling. Respondent received the Notice of Ruling.

9. At no time did Respondent inform Sanchez of the Court's May 14, 2007 Notice of Ruling.

10. On June 1, 2007, counsel for Costco served Respondent with a motion to compel responses to the Form Interrogatories and a motion to compel responses to Request for Production of Documents. Both motions were set to be held on June 28, 2007. Respondent received both motions.

11. At no time did Respondent inform Sanchez of the motion to compel responses to Form Interrogatories. At no time did Respondent inform Sanchez of the motion to compel responses to Request for Production of Documents.

12. On June 28, 2007, the court held a hearing on Costco's motion to compel responses to Form Interrogatories and motion to compel responses to Request for Production of Documents. Counsel for Costco appeared at the hearing; neither Respondent nor Sanchez appeared at the hearing. The Court ordered Respondent to personally serve full and complete, code-compliant, verified responses to the Form Interrogatories without objection by no later than July 9, 2007. The Court also ordered Respondent to personally serve full and complete, code-compliant, verified responses to the Request for Production of Documents without objection by no later than July 9, 2007. On June 28, 2007, a copy of the Court's June 28, 2007 Notice of Ruling was served on Respondent. Respondent received the Notice of Ruling.

13. At no time did Respondent inform Sanchez of the June 28, 2007 Notice of Ruling.

14. On June 29, 2007, the court held a Case Management Conference and OSC re: Sanctions for Failure to Appear in the civil matter. Neither Respondent nor Sanchez appeared. The Court continued the Case Management Conference and set an OSC Re: Terminating Sanctions for August 3, 2007. Additionally, the Court imposed sanctions jointly and severally against Respondent and Sanchez in the sum of \$500 to be paid to Costco's counsel before July 13, 2007. On June 29, 2007, a copy of the Court's June 29, 2007 Notice of Ruling was served on Respondent. Respondent received the Notice of Ruling.

15. At no time did Respondent inform Sanchez of the June 29, 2007 Notice of Ruling.

16. On August 3, 2007, the Court held a Case Management Conference and OSC re: Sanctions for Failure to Appear in the civil matter. Neither Respondent nor Sanchez appeared at the hearing. The Court ordered the civil matter dismissed with prejudice. On August 3, 2007, a copy of the Court's Order of Dismissal was served on Respondent. Respondent received the Order of Dismissal.

17. At no time did Respondent inform Sanchez of the Order of Dismissal.

18. In July 2011, Sanchez reviewed the Los Angeles County Superior Court website and discovered that Respondent had filed a complaint on her behalf in the civil matter, and that the civil matter was dismissed in August 2007.

19. On February 28, 2012, Respondent paid Costco's counsel \$500 pursuant to the Court's June 29, 2007 order.

Conclusions of Law

By failing to prosecute the civil matter, Respondent failed to perform competently in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

By failing to inform Sanchez of the filing of the complaint in the civil matter, service of the Form Interrogatories and Request for Production of Documents, service of the motions to compel responses to the Form Interrogatories and Request for Production of Documents, the Court's orders of May 14, 2007, June 28, 2007, and June 29, 2007 as memorialized in the respective Notice of Rulings, and the Order of Dismissal of the civil matter, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

AGGRAVATING CIRCUMSTANCES.

1. Prior Record of Discipline

A prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has been a member of the State Bar since June 6, 1989, and has a prior record of discipline.

On May 12, 2010, Respondent was privately reprovved in Case No. 09-O-13905. Respondent stipulated that in 2005, he failed to take any steps to complete his clients' binding arbitration, and thereby failed to perform competently in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. Multiple Acts of Wrongdoing.

Respondent failed to perform for, and communicate with, Sanchez. Respondent also failed to pay or move to modify or vacate the court's sanction order. Respondent's multiple acts of misconduct are an aggravating circumstance. (Std. 1.2(b)(ii).)

3. Harm

By failing to prosecute the civil matter on Sanchez's behalf, which led the court to dismiss the matter, Respondent caused harm to his client. This is an aggravating circumstance. (Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES.

1. Candor and Cooperation

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

2. Good Character

Respondent has furnished evidence of his record of involvement in bar association and community service activities. Respondent has also provided the State Bar with character letters from lawyers and the general community with knowledge of the misconduct herein. The information provided by Respondent demonstrates good moral character and his commitment to the legal profession.

OTHER FACTORS IN CONSIDERATION.

During the period in which the misconduct herein was committed, Respondent did not employ an adequate office staff to assist him with the management of his office. After the misconduct was committed herein, Respondent recognized the inadequacy of his office staff. Respondent now has an adequate staff and an office management plan that is designed to prevent the type of misconduct committed herein from occurring again.

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.”

Standard 1.7(a) provides that if a member has a prior record of discipline, the degree of discipline 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.

Standard 1.6(a) provides that if two or more acts of professional misconduct are acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by the standards for the different acts, the sanction imposed shall be the most severe of the different applicable standards.

Standards 2.4(b) and 2.6(a) apply in this matter. The most severe sanction is found at Standard 2.6(a) which recommend disbarment or suspension for offenses involving failing to communicate adequately and failing to obey court orders, respectively, depending on 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.

The discipline imposed herein is progressive, in conformity with Standard 1.7(a), and within the range delineated by Standard 2.6(a).

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was March 12, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

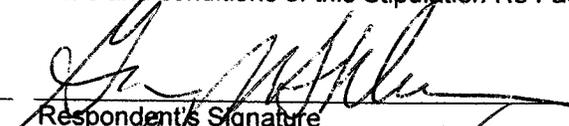
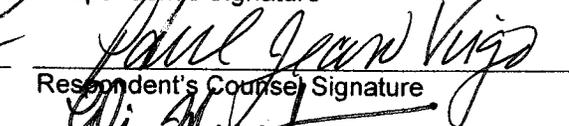
Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of March 12, 2012, the prosecution costs in this matter are \$2,797. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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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>3-13-12</u> Date	 Respondent's Signature	<u>Gary Martin Sklar</u> Print Name
<u>3/15/2012</u> Date	 Respondent's Counsel Signature	<u>Paul Jean Virgo</u> Print Name
<u>3/22/2012</u> Date	 Deputy Trial Counsel's Signature	<u>Eli D. Morgenstern</u> Print Name

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STAYED SUSPENSION ORDER

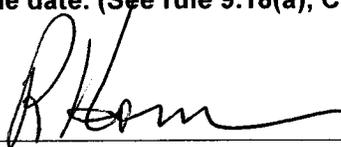
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.)**

3/28/12

Date



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 29, 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:

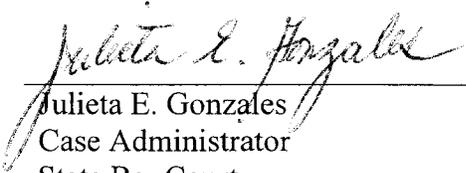
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL JEAN VIRGO ESQ
9909 TOPANGA BLVD #282
CHATSWORTH, CA 91311

- 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 March 29, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court