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| State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION | | | PUBLIC MATTER |
| Counsel For The State Bar Kimberly G. Anderson The State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1083 Bar # 150359 | Case Number(s): 11-O-18814-RAH 12-O-12217-RAH | For Court use only <div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin-bottom: 5px;">AUG 06 2012</div> <div style="font-size: 0.8em; font-weight: bold; margin-bottom: 5px;">STATE BAR COURT</div> <div style="font-size: 0.8em; font-weight: bold; margin-bottom: 5px;">CLERK'S OFFICE</div> <div style="font-size: 0.8em; font-weight: bold; margin-bottom: 5px;">LOS ANGELES</div> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 10px;"> kwiktag[®] 152 140 379 </div>  | |
| Counsel For Respondent Richard A. Moss 255 South Marengo Avenue Pasadena, CA 91101 (626) 796-7400 Bar # 42329 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING | | |
| In the Matter of: Alana Gershfeld Bar # 196454 A Member of the State Bar of California (Respondent) | ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | | |

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted September 1, 1998.
- (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 14 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):
 - 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: two 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 11.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Stipulation Attachment at page 11.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

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- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Stipulation Attachment at page 11.

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 90 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.

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- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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**

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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:**

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| In the Matter of: Alana Gershfeld | Case Number(s): 11-O-18814 and 12-O-12217 |
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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";

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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: Alana Gershfeld
CASE NUMBER(S): 11-O-18814-RAH and 12-O-12217-RAH

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-18814 (Complainant: Dominic McGinty)

FACTS:

1. On August 25, 2009, Dominic McGinty ("McGinty") hired Respondent to represent him in a lawsuit for personal injuries against his landlord as a result of a slip and fall, which occurred on March 12, 2009.
2. On March 11, 2011, Respondent filed a lawsuit on behalf of McGinty against his landlord in the case entitled *Dominic McGinty v. James Bechler*, Los Angeles Superior Court Case No. NC055788.
3. The case was scheduled for a Case Management Conference ("CMC") on August 8, 2011. Respondent had notice of the CMC date.
4. On August 8, 2011, Respondent failed to appear at the CMC. The court set the matter for an Order to Show Cause hearing ("OSC") regarding dismissal for failure to prosecute the case on September 1, 2011 and ordered counsel for the defendant to give notice of its ruling.
5. On August 9, 2011, counsel for the defendant served Respondent with notice of the ruling at the August 8, 2011 CMC and notice that the case was set for an OSC regarding dismissal for failure to prosecute the case on September 1, 2011. Respondent received notice of the September 1, 2011 hearing.
6. On September 1, 2011, Respondent failed to appear at the OSC. The court continued the OSC until September 27, 2011 and the clerk of the court served Respondent with notice of the September 27, 2011 hearing. Respondent received notice of the September 27, 2011 hearing.
7. On September 27, 2011, Respondent failed to appear at the OSC hearing. The court dismissed the case without prejudice pursuant to Code of Civil Procedure section 583.410(a). The court ordered counsel for defendant to give notice of its ruling.
8. On or about September 28, 2011, counsel for defendant served Respondent with notice of the court's September 27, 2011 ruling dismissing the case. Respondent received notice of the court's dismissal order.

9. Between August 2009 and October 2011, McGinty attempted to contact Respondent by telephone on approximately twelve occasions to request status updates on his case. Respondent received the messages, but she did not return McGinty's calls.

10. On March 23, 2012, Respondent filed a motion to set aside the dismissal order pursuant to Code of Civil Procedure, section 473 and a declaration acknowledging the dismissal was her fault, which was granted by the court. On May 3, 2012, the court set aside the dismissal order. The court set the matter for a CMC on June 1, 2012. Respondent had notice of the June 1, 2012 CMC date.

11. On June 1, 2012, the Respondent failed to appear for the CMC and the case was dismissed a second time with prejudice.

CONCLUSIONS OF LAW:

12. By failing to attend the August 8, 2011, September 1, 2011, September 27, 2011 and June 1, 2012 hearings, and by failing to prosecute the case, Respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

13. By failing to respond to McGinty's telephone calls between August 2009 and in or about October 2011, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

Case No. 12-O-12217 (Complainant: Greg Schwartz)

FACTS:

14. On July 14, 2011, Greg Schwartz ("Scwhartz") hired Respondent to represent him with respect to an uninsured motorist claim against his insurance company due to injuries sustained in a July 13, 2011 accident.

15. On August 3, 2011, Respondent received and deposited a \$15,000 settlement draft from the insurance company into her client trust account for the settlement of Schwartz's claim. Pursuant to her agreement with Schwartz, Respondent issued a check from her client trust account to herself in the amount of \$5,000 for her attorneys' fees and she issued a check to Schwartz for \$5,000. Respondent retained \$5,000 to pay Schwartz's medical bills.

16. Between August 3, 2011 and February 28, 2012, Respondent did not take any action on behalf of Schwartz to pay his medical bills out of the remaining \$5,000 and she did not communicate with Schwartz about the payment of his medical bills.

17. On February 22, 2012, Schwartz filed a State Bar complaint against Respondent.

18. Respondent did not take any action on behalf of Schwartz to pay his medical bills out of the remaining \$5,000 and she did not communicate with Schwartz about the payment of his medical bills until May 29, 2012, after having been made aware of the State Bar complaint Schwartz had filed against her.

19. Between August 3, 2011 and May 29, 2012, Respondent did not take any action to resolve the medical bills.

20. On May 29, 2012, Respondent issued checks to pay three of Schwartz's medical providers a total of \$3,575 and issued a check to Schwartz for the remaining \$1,425 balance of his funds.

CONCLUSIONS OF LAW:

21. By failing to resolve Schwartz's medical bills with his medical providers at any time between August 3, 2011 and May 29, 2012, Respondent 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 pay Schwartz's medical providers, and by failing to pay Schwartz the balance of the funds she was holding at any time between August 3, 2011 and May 29, 2012, Respondent failed to promptly pay our entrusted funds in willful violation of rule 4-100(B)(4) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

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

AGGRAVATION.

Harm: Respondent's conduct caused harm to McGinty as he lost his cause of action.

Multiple Acts of Misconduct: Respondent engaged in multiple acts of misconduct.

MITIGATION.

Additional Mitigating Circumstance:

Respondent was admitted to practice law in California on September 1, 1998 and she has no prior record of discipline.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.6 of the Standards for Attorney Sanctions for Professional Misconduct ("Standard" or "Standards) provides that where culpability is found with respect to more than one violation, the discipline imposed shall be the more or most severe of the different applicable sanctions.

Standard 2.4(b) applies to cases where an attorney intentionally, recklessly or repeatedly fails to perform competent legal services for a client or clients not amounting to a pattern of misconduct. It states:

Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client

shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 applies to a failure to communicate with a client. It provides for a range of discipline from suspension to disbarment.

Standard 2.2(b) applies to Respondent's rule 4-100(B)(4) violation. 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.

Standard 2.2(b) is the most severe sanction and deviation from the applicable discipline standards in this case is not warranted. (*In re Silvertown* (2005) 36 Cal.4th 81, 89-94.)

DISCUSSION.

In determining the appropriate level of discipline, the Standards are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 89-94 and *In re Brown* (1995) 12 Cal.4th 205, 220.) But the Standards are not applied in a talismanic fashion, and the Court tempers its analysis of the proper level of discipline by considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) In the instant case, the discipline is within the applicable range based upon the Standards and case law and deviation is not appropriate.

Respondent's record of no prior discipline for the first eleven years of her practice is entitled to significant weight as a mitigating factor. (See, *In the Matter of Connor* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 106, recognizing that both the State Bar Court and the Supreme Court have considered the lack of a prior record of discipline as mitigation even where the conduct is found to be serious. See also, *Edwards v. State Bar* (1990) 52 Cal.3d 28, 31-32, assigning mitigation credit for almost twelve years of discipline-free practice despite an intentional misappropriation and commingling.)

However, in aggravation, Respondent's actions did involve harm to one client and did involve multiple acts of misconduct. Respondent's misconduct in two client matters does not amount to a pattern, but does involve multiple acts of misconduct.

In *Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 45-46, the Review Department reviewed the discipline for an attorney with no prior record who had been found culpable of abandoning a single client and observed that in those matters the discipline ranged from no actual suspension to 90 days actual suspension. See also, *Van Sloten v. State Bar* (1983) 48 Cal.3d 921; *Wren v. State Bar* (1983) 34 Cal.3d 81; *Harris v. State Bar* (1990) 51 Cal.3d 1082; *Layton v. State Bar* (1990) 50 Cal.3d 889.

In *Matthew v. State Bar* (1989) 49 Cal.3d 784,791, the Court concluded that the respondent's abandonment of three clients in three different matters was not habitual and did not amount to a pattern,

but was also not a single isolated incident. The Court concluded respondent's misconduct warranted a sixty day actual suspension. The respondent in *Matthew* had not been practicing law for a lengthy period of time, whereas the Respondent in the instant case had been practicing law for approximately eleven years without any prior discipline in California at the time of the misconduct. The Respondent requires more discipline than the attorney in *Matthew* because of the trust account violation.

Taking into account the mitigating factor and the two aggravating factors, coupled with misconduct in two client matters that did not amount to a pattern of misconduct, but did involve multiple acts of misconduct and a trust account violation, a ninety-day actual suspension, together with three years' probation and one year stayed suspension is necessary and appropriate to satisfy Standard 1.3.

COSTS OF DISCIPLINARY PROCEEDINGS.



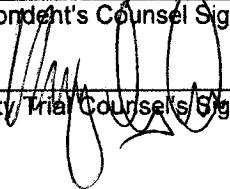
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 13, 2012, the prosecution costs in this matter are approximately \$3,779.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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| In the Matter of: Alana Gershfeld | Case number(s): 11-O-18814 and 12-O-12217 |
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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>7/23/12</u> Date | <u></u> Respondent's Signature | <u>ALANA GERSHFELD</u> Print Name |
| <u>7/23/12</u> Date | <u></u> Respondent's Counsel Signature | <u>RICHARD A. MOSS</u> Print Name |
| <u>7/23/12</u> Date | <u></u> Deputy Trial Counsel's Signature | <u>KIMBERLY C. ANDERSON</u> Print Name |

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In the Matter of:
Alana Gershfeld

Case Number(s):
11-O-18814 and 12-O-12217

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.

1. On page 11 of the stipulation, under the subdivision titled "Additional Mitigating Circumstance," the following text is INSERTED at the end:

Even though respondent's misconduct must be considered serious, her 11 years of misconduct-free practice is a significant mitigating circumstance. (Std. 1.2(e)(i); In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme Court has repeatedly applied standard 1.2(e)(i) in cases involving serious misconduct and citing Rodgers v. State Bar (1989) 48 Cal.3d 300, 317; Cooper v. State Bar (1987) 43 Cal.3d 1016, 1029].)

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

8-6-12


RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 6, 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:

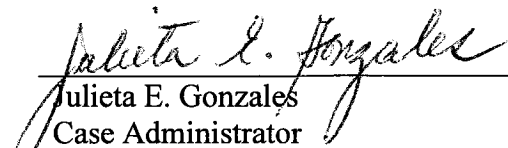
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD ALAN MOSS ESQ
255 S MARENGO AVE
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- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 6, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court