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| State Bar Court of California Hearing Department Los Angeles REPROVAL | | |
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| Counsel For The State Bar William Todd Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 213-765-1491 Bar # 259194 | Case Number(s): 12-C-10899-DFM | For Court use only <div style="text-align: center;"> FILED JUN 22 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; margin-top: 20px;"> PUBLIC MATTER </div> |
| In Pro Per Respondent David James Lola 100 North Tryon, Ste B220, #273 Charlotte, NC 28202 619-400-3122 Bar # 231190 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING | |
| In the Matter of: DAVID JAMES LOLA Bar # 231190 A Member of the State Bar of California (Respondent) | PUBLIC REPROVAL <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 June 3, 2004.
- (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 9 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 (public reproof).
 - ☐ Case ineligible for costs (private reproof).
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

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

(Effective January 1, 2011)

Reproof

- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would

establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Respondent lacks any prior discipline, but his relatively short period in practice limits this fact's mitigating weight. In the Matter of Aguiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 (seven years of law practice without prior discipline is worth only slight weight in mitigation).

Respondent admits his misconduct and has cooperated with the State Bar in preparing this stipulation. In the Matter of Spaith (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 516.

D. Discipline:

- (1) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

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

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **1 year**.
- (2) ☒ During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: **Respondent lives in North Carolina. Respondent shall complete the six (6) hours of continuing legal education in legal ethics within one (1) year of the effective date of this stipulation and provide proof, in writing, to the Office of Probation within thirty (30) days thereafter. This requirement is separate from any MCLE requirement, and Respondent will not receive any MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar).**
- (9) ☒ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.

☒ No MPRE recommended. Reason: The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. In the Matter of Respondent G (Review Dept. 1992), 2 Cal. State Bar Ct. Rptr. 181 .

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID JAMES LOLA, SBN #231190

CASE NUMBER(S): 12-C-10899-DFM

A. FACTS AND CONCLUSIONS OF LAW.

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

FACTS:

1. On November 27, 2011, police officers on patrol in Salinas, California discovered a fight in progress.
2. As the officers moved in, they were advised that Respondent, a participant in the fight, was armed.
3. Respondent was arrested under suspicion of carrying a concealed weapon (firearm).
4. Respondent was carrying a concealed firearm at the time of his arrest.
5. The Salinas Police Department later confirmed that Respondent was not licensed to carry a concealed weapon as required by California law.
6. On December 10, 2011, Respondent pled guilty to a misdemeanor violation of California *Penal Code* section 12025 (a)(2), carrying a concealed weapon, arising from the November 27, 2011 incident, and was convicted of same.
7. The sentence imposed on Respondent on January 25, 2012 included a one (1) year conditional probation with the following conditions:
 - a. Do not commit same or similar offense.
 - b. The weapon seized is to be disposed of according to law.
 - c. Pay a fine, including penalty assessments of \$400.00.
 - d. Pay a restitution fine of \$120.00 to the State Restitution Fund. (PC 1202.4(b)).

CONCLUSIONS OF LAW:

8. The facts and circumstances surrounding Respondent's conviction for violating California *Penal Code* section 12025(a)(2) do not constitute moral turpitude but do constitute other misconduct warranting discipline.

B. PENDING PROCEEDINGS.

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

C. AUTHORITIES SUPPORTING DISCIPLINE.

Standards for Attorney Sanctions for Professional Misconduct

The analysis of what is the appropriate level of discipline begins with the Standards for Attorney Sanctions as reaffirmed by *In Re Silverton* (2005) 36 Cal. 4th 81. Though they are not binding on the Supreme Court and are not a "fixed formula," the standards do promote consistent and uniform application of discipline as well as the purpose of discipline, enunciated in standard 1.3: the protection of the public, the courts and the legal profession as well as the maintenance of high professional standards.

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

Standard 3.4 provides that final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of the [Standards for Attorney Sanctions for Professional Misconduct] appropriate to the nature and extent of the misconduct found to have been committed by the member.

Decisional Law

In re Hickey (1990) 50 Cal. 3d 571. Respondent in Hickey faced discipline following his plea of no contest to a misdemeanor violation of California *Penal Code* 12025 section (b), carrying a concealed weapon, as well as a violation of what is now *Rules of Professional Conduct* rule 3-700 for an improper withdrawal in a client matter.

As in this case, the concealed weapon charge in *Hickey* arose out of a violent incident involving Hickey and others in May of 1987.¹ The only mitigation in *Hickey* was Hickey's subsequent (to the misconduct) enrollment in Alcoholics Anonymous. The ultimate discipline in *Hickey* was a three (3) year suspension, stayed, with thirty (30) days actual suspension and three (3) years probation.

Here, the misconduct is less severe, as there is no client-related misconduct. Additionally, unlike *Hickey*, there is no evidence of additional criminal conduct in the instant matter. Also, the Respondent in this matter is entitled to limited mitigation from his seven years of discipline free practice. Therefore, the stipulated discipline herein falls within the range of discipline suggested by the standards, and is consistent with judicial precedent. In addition, the parties believe that the stipulated discipline herein is adequate to protect the public, courts and the legal profession.

D. COSTS

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of June 11, 2012, the estimated prosecution costs in this matter are approximately \$2,287.00. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.


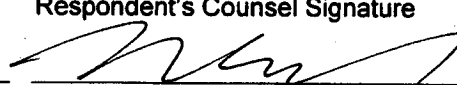
¹ Another factor in *Hickey* was a separate but similar incident in April 1987. However, the April 1987 incident did not result in a criminal charge.

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| In the Matter of: DAVID JAMES LOLA, SBN #231190 | Case number(s): 12-C-10899-DFM |
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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>6/14/2012</u> Date | <u></u> Respondent's Signature | <u>David James Lola</u> Print Name |
| <u>6/18/2012</u> Date | <u></u> Deputy Trial Counsel's Signature | <u>William Todd</u> Print Name |

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| In the Matter of: DAVID JAMES LOLA, SBN #231190 | Case Number(s): 12-C-10899 |
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

06-21-2012
Date


RICHARD A. PLATEL
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 June 22, 2012, I deposited a true copy of the following document(s):

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

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

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

**DAVID J. LOLA
DAVID J LOLA ESQ
100 NORTH TRYON
SUITE B220 #273
CHARLOTTE, NC 28202**

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

WILLIAM TODD, Enforcement, Los Angeles

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



Tammy Cleaver
Case Administrator
State Bar Court