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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

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<p>In Pro Per Respondent</p> <p>Jerry A. LaCues 3110 Chino Avenue Suite 230 Chino Hills, CA 91709 (909) 627-3535</p> <p>Bar # 77088</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JERRY A. LaCUES</p> <p>Bar # 77088</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 December 21, 1977.
- (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.



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- (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 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - 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 (2) billing cycles immediately following the effective date of the Supreme Court Order in this matter. (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 First imposition of discipline was in case no. 02-O-14730
 - (b) Date prior discipline effective the first imposition of discipline was effective August 10, 2004.
 - (c) Rules of Professional Conduct/ State Bar Act violations: The violation in the first imposition of discipline was Rule of Professional Conduct 3-110(A).
 - (d) Degree of prior discipline the first imposition of discipline was a private reproof.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

The second prior record of discipline in case nos. 11-O-10016 and 11-O-14021 for violating Rules of Professional Conduct 4-100(A) and 3-110(A), imposing a thirty (30) day actual suspension, consists of a stipulated disposition, approved by the State Bar Court, now filed with the Supreme Court.

- (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. See the attachment to the Stipulation Re Facts, Conclusions of Law and Disposition at page 8.
- (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.

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- (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:

See the attachment to the Stipulation Re Facts, Conclusions of Law and Disposition at page 8.

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:
- (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.
- (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: Respondent is required to complete Ethics School in Case Nos. 11-O-10016 and 11-O-14021.
- (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 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: Respondent is required to pass the MPRE in Case Nos. 11-O-10016 and 11-O-14021

- (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:**

The Attachment to the Stipulation re Facts, Conclusions of Law and Disposition comprises pages 7 to 10.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

In the Matter of Jerry A. LaCues

Case No. 12-O-10271

PENDING PROCEEDINGS:

The disclosure date referred to on page two, paragraph A.(7), was May 8, 2012.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct.

Case No. 12-O-10271

FACTS

1. In late summer 2010, Chris Bowen and his wife Kim Calabrano hired Respondent for a construction defect matter.
2. In December 2010, Respondent settled the construction defect matter for \$15,000.
3. Between the time they hired Respondent and the settlement of the construction defect matter, Bowen and Calabrano entered dissolution proceedings.
4. Both clients agreed to settle the construction defect matter for \$15,000. They both agreed to receive \$5,000 of the \$10,000 settlement owed to the clients. The attorney fees were \$5,000.
5. Respondent paid out \$5,000 of the settlement to Calabrano once the settlement was received and deposited into Respondent's Client Trust Account.
6. After the matter settled with both clients' authority, a dispute arose between Bowen and Calabrano as to the payout of the remaining \$5,000. The clients communicated the dispute to Respondent. Calabrano claimed Bowen owed her part of the \$5,000 which was originally to be paid to Bowen based on orders in the dissolution proceedings.
7. The dispute delayed the payout of the remaining settlement funds for several months.
8. After several months the clients notified Respondent that they agreed to the distribution of the remaining \$5,000 to Bowen.
9. Despite receiving the notice that the clients now agreed about the distribution, Respondent delayed the final payout for several months due to the press of business in his office.

10. When the clients contacted Respondent about the distribution several months later, Respondent paid out the funds to Bowen. Respondent paid Bowen \$10,000, disclaiming his attorney fees of \$5,000 to atone for the delay in paying out the remaining settlement funds.

CONCLUSIONS OF LAW

By failing distribute the disputed portion of the construction defect settlement funds as soon as the clients notified Respondent that they had settled their dispute over the payout of the funds, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive in wilful violation of Rule of Professional Conduct 4-100(B)(4).

MITIGATING CIRCUMSTANCES

Remorse

Respondent delayed in paying out the remaining funds once the clients had settled their dispute over the payout of the funds. Once the clients contacted him again, Respondent paid out the remaining funds to the clients and acknowledged the delay was attributable to press of business in his office. In order to demonstrate his remorse, Respondent disclaimed his attorney fees of \$5,000 to atone for his delay in paying out the funds.

Additional Mitigating Circumstances

Respondent met with the State Bar, cooperated in the investigation, and entered this Stipulation fully resolving this matter. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (See, *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521).

AUTHORITIES SUPPORTING DISCIPLINE

STANDARDS FOR ATTORNEY SANCTIONS

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct 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.

Pursuant to Standard 1.2 of the Standards for Attorney Sanctions for Professional Misconduct:

(b) "Aggravating circumstance" is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.

Circumstances which shall be considered aggravating are:

- (i) the existence of prior record of discipline and the nature and extent of that record; . . .
-

Pursuant to Standard 1.6(b) of the Standards for Attorney Sanctions for Professional Misconduct,

The appropriate sanction shall be the sanction imposed unless
(i) Aggravating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those aggravating circumstances, by themselves and in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required to fulfill the purposes of imposing sanctions set forth in standard 1.3. In that case, a greater degree of discipline than the appropriate sanction shall be imposed or recommended.

Pursuant to Standard 2.2(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful 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.

In this matter, Respondent failed to promptly pay out settlement proceeds to one of two clients, after the clients resolved their dispute as to the payout of those funds. Despite Standard 2.2(b), a minor trust account violation does not require the imposition of ninety days actual suspension. *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732 (where the attorney committed a minor trust account violation, made voluntary restitution and presented character evidence, imposition of a private reproof was appropriate). Here, Respondent spontaneously made voluntary restitution and disclaimed his own fees to compensate the clients for the delay in paying out their funds.

In *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 387, the court imposed a two month stayed suspension where the attorney unreasonably delayed notifying the client of receipt of client funds; *see also, In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113 (court imposed no actual suspension for trust account violation

which did not constitute misappropriation). In this matter, the delay in paying out funds stemmed from a failing to respond to requests from the clients once they resolved their dispute. The delay was the result of a performance failure rather than a classic trust violation.

While Respondent has recent prior discipline, the misconduct here in unreasonably delaying payment to the Bowens occurred during the same time period as the misconduct involved in Respondent's prior discipline, which resulted in a thirty (30) day actual suspension. The prior discipline also involved a trust account violation – Rule of Professional Conduct 4-100(A). Accordingly, the prior discipline should not be given significant aggravating weight. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. Bar Ct. Rptr. 349.

If this matter had been considered at the time the prior discipline of thirty day actual suspension was imposed, the level of the discipline would have resulted in no more than a ninety day actual suspension. The stipulated discipline of a thirty (30) day actual suspension is sufficient to protect the interests of the public and the profession in this matter (when considered in the context of the previously imposed thirty (30) day actual suspension).

Despite this discipline being Respondent's third imposition of discipline, Standard 1.7(b) should not be applied to require Respondent's disbarment in this third disciplinary proceeding. *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192. As set forth above, the misconduct in this matter was contemporaneous with the misconduct in the second discipline, and less serious. Where the misconduct in multiple disciplines took place at the same time, they should be considered as one matter for the purposes of imposition of discipline. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.

The stipulated discipline of thirty (30) days additional actual suspension is the appropriate level of discipline for the acknowledged violation of Rule of Professional Conduct 4-100(B)(4).

FURTHER AGREEMENTS OF THE PARTIES

The factual statements contained in this Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval.

COSTS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of May 8, 2012, the estimated 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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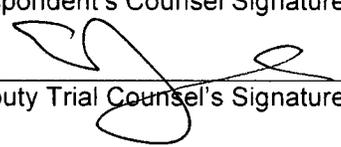
In the Matter of: JERRY A. LaCUES	Case number(s): 11-O-10271
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SIGNATURE OF THE PARTIES

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.

5/31/12  Jerry A. LaCues
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

5.31.12  Erin McKeown Joyce
Date Deputy Trial Counsel's Signature Print Name

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 21, 2012, 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:

**JERRY A LACUES
LAW OFC JERRY A LACUES
3110 CHINO AVE #230
CHINO HILLS, CA 91709**

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

ERIN M. JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 21, 2012.



Tammy Cleaver
Case Administrator
State Bar Court

AMENDED 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 29, 2012, 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:

**JERRY A LACUES
LAW OFC JERRY A LACUES
3110 CHINO AVE #230
CHINO HILLS, CA 91709**

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Tammy Cleaver
Case Administrator
State Bar Court