

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
PUBLIC MATTER Counsel For The State Bar William Todd Deputy Trial Counsel 1149 S Hill Street Los Angeles, California 90015 213-765-1491 Bar # 259194	Case Number(s): 12-O-11431-RAP, 12-O-11438-RAP, 12-O-12833-RAP, 12-O-13344-RAP	For Court use only FILED MAR 07 2013 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
	Counsel For Respondent Michael R. Magasin 1888 Century Park E, Ste 190 Los Angeles, California 90067 310-255-6170 Bar # 44562	
In the Matter of: JAMES MICHAEL POWELL Bar # 165639 A Member of the State Bar of California (Respondent)		

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 August 6, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 18 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)



(Do not write above this line.)

- (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: the two 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 11-O-11320, et al.
 - (b) ☒ Date prior discipline effective August 11, 2012
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rules 3-110(A), 3-300, 3-700(D)(1) and 3-700 (D)(2)
 - (d) ☒ Degree of prior discipline One year stayed suspension, one year probation, restitution of \$6,120.00
 - (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. Please see "Attachment to Stipulation," at 14.

(Do not write above this line.)

- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Please see "Attachment to Stipulation," at 14.
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Please see "Attachment to Stipulation," at 13.

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

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

(Do not write above this line.)

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Please see "Attachment to Stipulation," at 14.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two 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 two 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 six months.

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

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

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

(Do not write above this line.)

- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☒ The following conditions are attached hereto and incorporated: See "Fee Arbitration Probation Condition"
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

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

☐ No MPRE recommended. Reason:

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

ETHICS SCHOOL AND MPRE CONDITIONS:

Respondent's compliance with Ethics School and MPRE conditions in satisfaction of discipline imposed in his previous discipline in Case Nos. 11-O-11320, et al. will be deemed to satisfy the Ethics School and MPRE conditions imposed in this matter, even if such compliance predates the effective date of discipline herein.

(Do not write above this line.)

In the Matter of:
JAMES MICHAEL POWELL

Case Number(s):
11-O-11431-RAP, et al.

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
Francisco Viveros	\$3,895.00	May 2, 2011

- ☐ 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:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

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

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

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

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

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

d. Client Trust Accounting School

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

JAMES MICHAEL POWELL

CASE NUMBER(S):

12-O-11431-RAP, 12-O-11438-RAP, 12-O-12833-RAP,
12-O-13344-RAP

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 12-O-11431 (Complainant: Jacqueline McGraw)

FACTS:

1. On June 18, 2010, Jacqueline McGraw ("McGraw"), Guardian ad Litem for her minor grandson, retained Respondent on a contingency basis to represent her grandson in a personal injury matter already pending before the San Bernardino County Superior Court. The parties entered into a retainer agreement on June 18, 2010, but Respondent never filed a substitution of counsel in the pending matter to substitute into the case in place of the prior attorney.
2. On July 19, 2010, Respondent arranged for a contract attorney to make a special appearance on Respondent's behalf at an Order to Show Cause ("OSC") re: dismissal hearing. The contract attorney advised the court that McGraw was attempting to retain new counsel, even though McGraw had already retained Respondent to represent her several weeks prior. The court then dismissed the OSC, and instead scheduled a mandatory settlement conference for July 29, 2011, a trial readiness conference for September 22, 2011 and a jury trial for September 26, 2011. The contract attorney then advised Respondent of each of these dates.
3. Respondent failed to advise McGraw of the mandatory settlement conference scheduled for July 29, 2011, the trial readiness conference scheduled for September 22, 2011 or the jury trial scheduled for September 26, 2011.
4. Respondent did not appear at the mandatory settlement conference set for July 29, 2011, the trial setting conference set for September 22, 2011 or the jury trial set for September 26, 2011, and Respondent made no further appearances in the matter for which he was retained by McGraw.
5. Respondent failed to provide any services of value to or otherwise communicate with McGraw at any point after the OSC re: dismissal held on July 19, 2010. Respondent also failed to communicate

his withdrawal from the matter to McGraw, and failed to follow up with her to confirm the interests for her grandson were protected.

6. On November 3, 2011, the matter of McGraw's grandson was dismissed in part due to Respondent's failure to prosecute the action.

CONCLUSIONS OF LAW:

7. By failing to file a substitution of attorney in the McGraw matter following the execution of a retainer agreement, failing to appear for the mandatory settlement conference set for July 29, 2011, failing to appear for the trial setting conference set for September 22, 2011 and failing to appear for the jury trial set for September 26, 2011 and failing to provide any services of value in the matter for which he was retained by McGraw after the OSC re: dismissal held on July 19, 2010, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct rule 3-110(A).
8. By failing to advise McGraw of the mandatory settlement conference scheduled for July 29, 2011, the trial readiness conference scheduled for September 22, 2011 or the trial scheduled for September 26, 2011, 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).
9. By failing to advise McGraw that he was withdrawing from the representation of her grandson and failing to allow time for McGraw to seek new counsel, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of Rules of Professional Conduct rule 3-700(A)(2).

Case No. 12-O-11438 (Complainant: Geronimo and Delma Moreno)

FACTS:

10. On February 23, 2010, Geronimo and Delma Moreno ("the Morenos") retained Respondent to represent them in collection defense matter regarding homeowner association fees filed against the Morenos in the Los Angeles Superior Court on January 27, 2010. On February 26, 2010, Sam Ansari ("Ansari"), an employee of Respondent's law office, advised the Morenos that Respondent's office would charge a \$500 fee for collection defense, and that the Morenos' matter would likely be settled without having to appear in court. The Morenos instructed Ansari to proceed with the case, and in March of 2010, the Morenos paid Respondent's \$500 attorney fee. However, Respondent failed to file an answer to the suit originally filed on January 27, 2010 or to even make an appearance in the matter, and default was entered against the Morenos on April 5, 2010.
11. On April 28, 2010, the Morenos sent an e-mail to Respondent's office requesting status of their case. No reply from Respondent was received by the Morenos. On May 26, 2010, the Morenos requested

that Respondent's law office represent them in a separate proceeding during a conversation with Ansari, and paid an additional \$900 to Respondent between May 26, 2010 and August 1, 2010. Between May 27, 2010 and July 5, 2011, the Morenos' communications with Respondent were entirely through Ansari, despite multiple requests to Ansari to speak directly to Respondent.

12. On March 17, 2011, Ansari sent an e-mail to the Morenos claiming that a contempt motion would be filed against counsel for the homeowner's association. Ansari also advised the Morenos that he had some documents they needed to sign. On April 21, 2011, the Morenos sent an e-mail to Ansari stating that it had been five (5) weeks since his last e-mail and the Morenos had not received the paperwork Ansari described on March 17, 2011. No response was received until May 11, 2011, when Ansari apologized to the Morenos for not keeping them informed. He then advised the Morenos that he was preparing the contempt motion, that it would be ready for signature by the following week, and that it would then be filed in the bankruptcy court. No such motion was ever received by the Morenos or filed with the bankruptcy court. On June 27, 2011, the Morenos advised Ansari that a lien had been placed on their home arising from the default judgment of April 5, 2010. On July 5, 2011, the Morenos met and communicated with Respondent for the first time since May 27, 2010.
13. On February 3, 2012, the Morenos terminated Respondent's representation and requested both a refund and an accounting of all fees they paid to him in an e-mail sent to both Respondent and Ansari. However, neither Respondent nor Ansari responded to this message. Also, neither Respondent nor Ansari ever provided either an accounting or a refund to the Morenos.
14. On February 3, 2012, the Morenos made a complaint regarding Respondent with the State Bar, and on April 24, 2012 a State Bar investigator sent a letter dated April 24, 2012 to Respondent's membership records address requesting a written response to a set of allegations taken from the Morenos' complaint. Respondent did not provide a written response to the April 24, 2012 letter.
15. On May 11, 2012, a State Bar investigator sent a letter dated May 11, 2012 to Respondent's membership records address requesting a written response by May 25, 2012 to a set of allegations taken from the Morenos' complaint. On that same day, Respondent sent a fax to the State Bar investigator requesting a two week extension to file a response to the letter of April 24, 2012, but offered no substantive response to the allegations described in the letter dated April 24, 2012 until an August 3, 2012 meeting with the Office of Chief Trial Counsel in which prospective charges were discussed.

CONCLUSIONS OF LAW:

16. By failing to file an answer or otherwise appear on the Morenos' behalf in the action for which he was hired to defend, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct rule 3-110(A).

17. By failing to promptly respond to the Morenos' inquiries of April 21, 2011 and February 3, 2012, 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).
18. By failing to provide an accounting at the clients' request, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct rule 4-100(B)(4).
19. By failing to provide the State Bar the requested written response to the allegations of which Respondent was advised in letters sent to Respondent's membership records address on April 24, 2012 and May 11, 2012, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code section 6068(i).

Case No. 12-O-12833 (Complainant: Marino Brito)

FACTS:

20. On February 9, 2011, Marino Brito ("Brito") retained Respondent to prepare and file a Chapter 13 bankruptcy petition on Brito's behalf. Brito immediately paid \$1,000 to Respondent towards Respondent's \$5,200 fee. By April 8, 2011, Brito paid Respondent the entire \$5,200 fee, and on June 10, 2011, Brito signed the Chapter 13 bankruptcy petition in Respondent's San Bernardino office.
21. On June 14, 2011, Respondent filed a Chapter 7 bankruptcy petition on Brito's behalf, even though Respondent neither communicated nor discussed with Brito an intention to file a Chapter 7 in lieu of the Chapter 13 filing for which Brito had agreed, paid and signed. As a result of Respondent's actions, on June 24, 2011 Brito filed a Request for Dismissal of the Chapter 7 bankruptcy petition originally filed by Respondent on June 14, 2011.
22. On July 13, 2011, Brito met with Respondent and demanded a full refund of funds paid to Respondent. Though Respondent offered a refund of \$2,901 based on the relative difference in Respondent's Chapter 7 and Chapter 13 petition fees, Brito did not accept the offer, and Respondent did not issue payment to Brito for the \$2,901 as an undisputed amount. Brito then hired new counsel to resolve his bankruptcy.
23. Brito ultimately filed a small claims court action against Respondent, and on June 18, 2012, Brito and Respondent appeared in a Riverside County Small Claims Court for hearing on a refund of Brito's fees paid to Respondent. In settlement of Brito's claim, Respondent agreed to refund \$2,700 to Brito, and in fact delivered an initial payment of \$805 to Brito immediately. Respondent delivered two subsequent payments of \$947.50 to Brito prior to August 17, 2012.

CONCLUSIONS OF LAW:

24. By failing to advise Brito that Respondent intended to file a Chapter 7 bankruptcy petition instead of the Chapter 13 Brito signed and expected, 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).
25. By failing to refund unearned fees due to Brito as a result of Respondent's change in strategy, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct rule 3-700(D)(2).

Case No. 12-O-13344 (Complainant: Francisco Viveros)

FACTS:

26. On October 29, 2010, Francisco Viveros ("Viveros") retained Respondent to prepare and file a Chapter 13 bankruptcy petition on Viveros's behalf. The parties agreed on a fee of \$3895, and Viveros immediately paid Respondent \$2,000. The remaining \$1,895 was paid May 2, 2011, but Viveros's bankruptcy petition was never filed. In June 2012, Viveros cited the fact that the bankruptcy petition had not been filed and requested a refund from Respondent, but no refund was provided.

CONCLUSIONS OF LAW:

27. By failing to file the chapter 13 bankruptcy petition for which Respondent was initially retained, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct rule 3-110(A).
28. By failing to refund any of Viveros's funds despite never filing the bankruptcy petition as promised, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct rule 3-700(D)(2).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline, Standard 1.2(b)(i): Respondent has an instance of prior misconduct. In a stipulation effective August 11, 2012 in case nos. 11-O-11320, et al., Respondent admitted culpability for five violations in four client matters, including single violations of Rules of Professional Conduct rules 3-110(A) (failure to perform with competence), 3-300 (acquisition of interest(s) adverse to a client) and 3-700(D)(1) (failure to return client papers and/or property to client upon termination of representation). Additionally, Respondent stipulated to two violations of rule 3-700(D)(2) (failure to return unearned fees to client upon termination of representation). Generally, prior misconduct is considered aggravating to current misconduct. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. St. Bar Ct. Rptr. 151.)

The violations to which Respondent previously stipulated occurred throughout 2009, 2010 and 2011, which means the misconduct occurred in a period concurrent to the misconduct Respondent admits within this document. Generally, the aggravating force of prior discipline is diminished if the misconduct underlying that prior discipline occurred during the same time period as the current misconduct. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

Multiple/Pattern of Misconduct, Standard 1.2(b)(ii): Respondent committed multiple acts of misconduct, specifically multiple violations of the Rules of Professional Conduct and Business and Professions Code, for a total of twelve violations. The presence of multiple acts of misconduct is considered an aggravating circumstance. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93.) However, the instant case does not evidence a pattern of misconduct as the conduct did not extend over a prolonged course of time. (*Young v. State Bar* (1990) 50 Cal.3d 1204.)

Harm, Standard 1.2 (b)(iv): The case of Jacqueline McGraw's grandson was dismissed due in part to Respondent's failure to prosecute the action, a lien was placed on the Morenos' home arising from the lawsuit in which Respondent failed to perform competently in the actions he was retained to defend, and both Marino Brito and Francisco Viveros were forced to secure legal help from other attorneys resulting in additional fees. Therefore, Respondent's actions significantly harmed clients, and significant harm is an aggravating circumstance. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Candor/Cooperation: Respondent cooperated in the completion of this stipulation, and his cooperation extended to facts not easily proven. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.) However, since Respondent is stipulating to a failure to participate in a State Bar investigation, the mitigating weight here is limited.

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the

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

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

Standard 2.6 is the most severe of the standards applicable to Respondent's misconduct. Standard 2.6 provides that culpability of a member of a violation of Business and Professions Code section 6068 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim. Additionally, standard 2.2(b) requires a minimum ninety day actual suspension for violation of Rules of Professional Conduct rule 4-100.

Here, Respondent's failure to perform, failure to communicate with multiple clients, failure to return unearned fees and/or failure to account to clients are each examples of grave misconduct that violate Respondent's duties to his clients. That the failure to perform includes some of the basic steps in representation such as filing documents or making court appearances is troubling, as are Respondent's failures to communicate with clients to advise them of court dates and respond to their inquiries. Respondent's failure to cooperate with the State Bar investigation in the Morenos' matter is also significant, as it shows Respondent's inattention extending beyond his client matters.

When considering harm to clients, there is \$3,895 of restitution owed to Viveros, as well as absences of follow through in multiple cases. Though it can be difficult to quantify the precise amount of harm, there can be no doubt that the harm here is significant.

Based on the applicable standards, the appropriate level of discipline is two year suspension, stayed, with a six month actual suspension that will continue until satisfactory proof of restitution payment is provided to the Office of Probation. This level of discipline serves a primary purpose of public protection, and is appropriate in light of Respondent's admission of his misconduct, his agreement to enter a pre-trial stipulation and his agreement to make full restitution.

The stipulated level of discipline is appropriate under the Standards. Further, the stipulated level of discipline is consistent with reported cases involving similar misconduct. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [one year actual suspension for attorney who committed misconduct in fourteen client matters, including multiple acts of moral turpitude]; *Baker v. State Bar* (1989) 49 Cal.3d 804 [one year actual suspension after attorney's misconduct in ten client matters, including multiple acts of moral turpitude]; *Bach v. State Bar* (1991) 52 Cal.3d 1201 [thirty days actual suspension for repeatedly failing to perform or communicate over a two and a half-year period and failing to participate in a disciplinary investigation].)

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 25, 2013.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-11438	Seven	Rules of Professional Conduct rule 3-700(D)(2)
12-O-12833	Nine	Business and Professions Code section 6104

FEE ARBITRATION PROBATION CONDITION.

As an additional condition of probation, Respondent will do as follows:

Within thirty (30) days of the effective date of the discipline in this matter, Respondent agrees to provide the Office of Probation with a copy of the letter offering to initiate and participate in fee arbitration with Geronimo and Delma Moreno, along with a copy of the return receipt from the U.S. Postal Service or other proof of mailing.

Within sixty (60) days of the effective date of the discipline in this matter, Respondent agrees to provide the Office of Probation a declaration from Geronimo and Delma Moreno setting forth that a letter had been received from Respondent offering to initiate, pay any costs and fees associated with the fee arbitration, and participate in fee arbitration. Respondent is required to prepare the declaration for Geronimo and Delma Moreno and enclose it with the letter described within the preceding paragraph. Respondent should also enclose a stamped envelope addressed to the Office of Probation so that the declaration can be returned directly to the Office of Probation.

Respondent will fund all costs associated with fee arbitration for Geronimo and Delma Moreno.

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

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

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 25, 2013, the prosecution costs in this matter are \$3,349. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:
JAMES MICHAEL POWELL

Case number(s):
12-O-11431-RAP, et al.

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.

Date

Mar 4, 2013

Date

Date

Respondent's Signature

J R Magasin

Respondent's Counsel Signature

[Signature]

Deputy Trial Counsel's Signature

James Michael Powell

Print Name

Michael R. Magasin

Print Name

William Todd

Print Name

(Do not write above this line.)

In the Matter of:
JAMES MICHAEL POWELL

Case number(s):
12-O-11431-RAP, et al.

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.

3/5/13
Date


Respondent's Signature

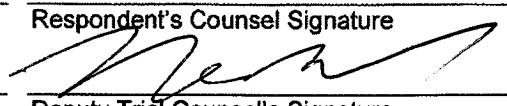
James Michael Powell
Print Name

Date

Respondent's Counsel Signature

Michael R. Magasin
Print Name

3/7/13
Date


Deputy Trial Counsel's Signature

William Todd
Print Name

(Do not write above this line.)

In the Matter of: JAMES MICHAEL POWELL	Case Number(s): 12-O-11431-RAP, et al.
---	---

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.

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

3-7-13


GEORGE E. SCOTT, JUDGE PRO TEM
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 7, 2013, 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:

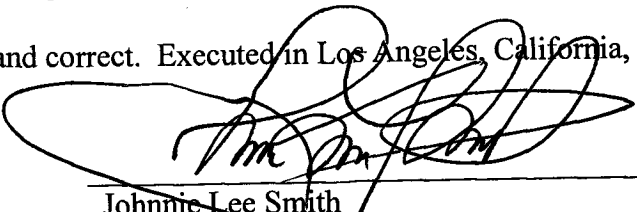
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL ROBERT MAGASIN
1888 CENTURY PARK E STE 1900
LOS ANGELES, CA 90067

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

William S. Todd
, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 7, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court