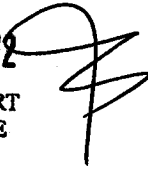


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State Bar Court of California  
Hearing Department  
Los Angeles  
STAYED SUSPENSION

**PUBLIC MATTER**

<p>Counsel For The State Bar</p> <p>William Todd Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015 213-765-1491</p> <p>Bar # 259194</p>	<p>Case Number(s): 12-O-11833-RAP</p>	<p>For Court use only</p> <p><b>FILED</b></p> <p>NOV 26 2012</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> 
<p>Counsel For Respondent</p> <p>Samuel J. Long 3877 12th St Riverside, California 92501</p> <p>Bar # 133159</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: KEVIN ROBERT RIVA</p> <p>Bar # 186921</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 16, 1996.
- (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 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."

(Effective January 1, 2011)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 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
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.

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- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Please see "Multiple Acts of Misconduct" on page eight of the attachment to the stipulation.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

Please see "Facts Re Additional Aggravating Circumstances" on page eight of the attachment to the stipulation.

**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.

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

**Additional mitigating circumstances**

Please see "Facts Re Additional Mitigating Circumstances" on page eight of the attachment to the stipulation.

## D. Discipline:

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of 1 year.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
  - ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
  - iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of 2 years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

## E. Additional Conditions of Probation:

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

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

- (5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
- 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**
- Respondent must apply for a client fee arbitration regarding Cesar Alvarado Real's matter within sixty (60) days of the effective date of the Supreme Court Order in this matter. Respondent is to bear the costs of this arbitration, and must provide proof of filing to the Office of Probation. Respondent must also provide proof of the outcome of this arbitration to the Office of Probation within one (1) year of the effective date of the Supreme Court order in this matter.



10. By failing to refund any part of Real's fee which was paid in advance, Respondent willfully failed to refund promptly at least a portion of a fee paid in advance that has not been earned in violation of Rules of Professional Conduct rule 3-700(D)(2).

#### **FACTS RE ADDITIONAL AGGRAVATING CIRCUMSTANCES.**

**Multiple/Pattern of Misconduct:** Respondent's admissions demonstrate multiple acts of misconduct. See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr 171. By failing to return Real's file and/or refund the unearned fee to Real, Respondent's misconduct injured Real in two ways, both of which are both distinct and serious. As a result, the number of charges here is properly considered an aggravating circumstance.

**Additional Aggravating Circumstances:** Respondent's failure to return Real's file to his client did cause some harm. See *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93. However, as appropriate handling of client property is central to an attorney's duties, and since the client's file is considered client property, Respondent's failure to return it upon demand is harmful, and is properly considered an aggravating circumstance.

#### **FACTS RE ADDITIONAL MITIGATING CIRCUMSTANCES.**

**No Prior Discipline:** Respondent has no prior record of discipline in fourteen (14) years of practice at the time of the misconduct. See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.

**Candor/Cooperation:** Respondent has cooperated with the State Bar in drafting this stipulation, including stipulation to all relevant facts, aggravation, and mitigation. However, cooperation with State Bar disciplinary proceedings is required, and the stipulations offered here are of facts easily proven, which limits the weight available in mitigation. See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41.

#### **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.4<sup>th</sup> 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 Silverton* (2005) 36 Cal.4<sup>th</sup> 81, 92, quoting *In re Brown* (1995) 12 Cal.4<sup>th</sup> 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.)



Standard 2.10 provides that culpability of a member of a 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.

Here, Respondent's failure to return his client's file and/or refund unearned fees certainly caused harm to the client, and offenses involving a failure to promptly return funds and/or property are not minor offenses. However, in this instance, the harm is not severe, and though Respondent's violations are well-established they are not especially egregious. As a result, these violations merit discipline in the lower range of standard 2.10, and a one-year stayed suspension will adequately address the purpose of attorney discipline.

### **Aggravation and Mitigation**

The next issue is the effect of aggravating and mitigating circumstances on the level of discipline. As described in standard 1.6(b), the appropriate sanction shall be the sanction imposed unless aggravating circumstances are found to surround the particular act of misconduct and that the net effect of those aggravating circumstances, in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required, or vice versa.

The relevant aggravating circumstance here is the presence of two acts of misconduct under standard 1.2 (b)(ii). Additionally, though there is some harm to the client here, the harm is not significant enough to fall under standard 1.2 (b)(iv), and thus would be considered merely an additional aggravating circumstance.

In mitigation, Respondent did have fourteen (14) years of discipline-free practice prior to this misconduct. Additionally, Respondent did cooperate with the State Bar in drafting this stipulation, which includes stipulations to facts, conclusions of law, aggravation, mitigation and level of discipline.

On the whole, the aggravation and mitigation here are roughly equivalent, resulting in no net change to the appropriate level of discipline. Therefore, the appropriate discipline, in light of both the aggravating and mitigating circumstances, remains a one-year stayed suspension.

### **California Supreme Court Precedent**

In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the respondent was found culpable of failing to perform legal services for client in uncontested marital dissolution proceeding, failing to communicate with client over much of the time, withdrawal of representation without client's consent or court approval, failing to refund unearned fees paid in advance and failure to cooperate in State Bar's investigation of the complaint against him. Respondent's mitigation in *Bach* was his twenty (20) years of misconduct-free practice leading up to his misconduct, and aggravation included his attitudes towards discipline, which was made obvious by his attempt to claim mitigation in multiple areas in which there was no supporting evidence. The court ultimately ordered a 12-month suspension, stayed, with actual suspension for 30 days.

Compared to this matter, the misconduct in *Bach* is more severe, as the misconduct in *Bach* was both broader (greater number of charges) and in some ways deeper (such as the repeated failures to communicate with a client). Also, the attitude of the respondent in *Bach* worked against him, and in fact strengthened the case for actual suspension. Here, as described above, the misconduct is both less severe

and narrower than that seen in *Bach*, and Respondent's attitude here is one of remorse, not indignance. In light of these factors, a one-year stayed suspension, without a period of actual suspension, is sufficient to protect the public, the courts, and the legal profession while also remaining consistent with both the standards for attorney discipline and relevant California Supreme Court precedent.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was October 30, 2012.

**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-11833	ONE	Rules of Professional Conduct rule 3-110(A)
12-O-11833	TWO	Business and Professions Code section 6068(m)
12-O-11833	THREE	Rules of Professional Conduct rule 4-100(A)
12-O-11833	FOUR	Rules of Professional Conduct rule 4-100(B)(3)
12-O-11833	FIVE	Rules of Professional Conduct rule 3-700(A)(2)

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 30, 2012, the prosecution costs in this matter are \$5,308.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: KEVIN ROBERT RIVA	Case number(s): 12-O-11833
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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.

October 30, 2012

Date

  
Respondent's Signature

Kevin Robert Riva

Print Name

October 30, 2012

Date

  
Respondent's Counsel Signature

Samuel J. Long

Print Name

October 30, 2012

Date

Deputy Trial Counsel's Signature

William Todd

Print Name

(Do not write above this line.)

In the Matter of: KEVIN ROBERT RIVA	Case Number(s): 12-O-11833
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**STAYED SUSPENSION ORDER**


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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date (See rule 9.18(a), California Rules of Court.)**

11/19/12

Date



RICHARD A. HONN  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 26, 2012, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING**

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

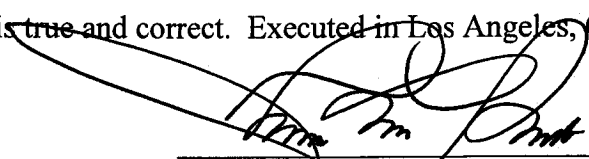
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SAMUEL J. LONG  
3877 12TH ST  
RIVERSIDE, CA 92501

- 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 November 26, 2012.



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Johnnie Lee Smith  
Case Administrator  
State Bar Court