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State Bar Court of California
Hearing Department **PUBLIC MATTER**
Los Angeles
ACTUAL SUSPENSION

<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-12091-RAP, 12-O-16312, 13-H-15082 (Unfiled)</p>	<p>For Court use only</p> <p>FILED</p> <p>OCT 18 2013</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Joseph Sclafani 12981 Perris Blvd Ste 113 Moreno Valley, California 92553 951-242-7019</p> <p>Bar # 134026</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: JOSEPH SCLAFANI</p> <p>Bar # 134026</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 June 14, 1988.
- (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 ~~17~~¹⁶ 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)

ABD
9/25/13



- (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 three 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 10-O-06776
 - (b) Date prior discipline effective April 24, 2013
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct rule 3-110(A) (failure to perform) and 3-700(D)(2) (failure to refund unearned fees). Please see "Attachment to Stipulation," page 12.
 - (d) Degree of prior discipline Private reproof
 - (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," page 13.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Please see "Attachment to Stipulation," page 13.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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

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

Additional mitigating circumstances:

Please see "Pre-Trial Stipulation" in "Attachment to Stipulation," page 13.

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 three 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.

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

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

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

A. Respondent's Duty to Initiate and Participate in Fee Arbitration

As a condition of probation, Respondent must initiate fee arbitration within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required by the organization conducting the fee arbitration to start the process. The fee arbitration will be for the \$6,200 in fees that Desiree and Eric Naujock paid Respondent in October and November of 2011. Respondent must not request more fees than have already been paid by, or on behalf of, Desiree and Eric Naujock.

Respondent must provide the Office of Probation with a copy of the conformed filing within six months from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitration to verify Respondent's compliance.

Respondent must fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the entity conducting the fee arbitration for information.

Respondent must accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent must abide by the arbitration award and forego the right to file an action seeking a trial de novo in court to vacate the award.

B. Disputed Funds Must be Held in Trust by Respondent

Respondent must keep the disputed funds in a separate interest-bearing trust account (not an IOLTA). If Respondent has removed the disputed funds from trust, Respondent must open a separate interest-bearing trust account and deposit the disputed funds into such account within fifteen (15) days from the effective date of discipline. Respondent must provide evidence, e.g. a copy of Respondent's bank statement showing that the disputed funds have been placed in trust within thirty (30) days from the effective date of this

matter, and a statement under penalty of perjury that the funds have remained in trust with each of Respondent's quarterly and final reports.

C. Respondent's Duty to Comply with the Arbitration Award

As a condition of probation, within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must 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. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

D. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment to Desiree and Eric Naujock

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of \$6,200 in fees that Desiree and Eric Naujock paid Respondent in October and November 2011, plus interest of 10% per annum from November 26, 2011 within six months from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within seven months from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed Desiree and Eric Naujock for all or any portion of the principal amount(s), Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, Respondent will still be liable for interest payments to Desiree and Eric Naujock. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution to Desiree and Eric Naujock before making payment to CSF. Satisfactory proof of payment(s) to CSF must be received by the Office of Probation within thirty (30) days of any payment.

E. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering Respondent to pay back the full amount of \$6,200 paid to Respondent by Desiree and Eric Naujock plus 10% interest from November 26, 2011.

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In the Matter of: JOSEPH SCLAFANI	Case Number(s): 12-O-12091-RAP, et al.
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Eric and Desiree Naujock	\$410	November 26, 2011
Hajime Shimizu	\$1,500	June 7, 2012
Darlene Gomez	\$2,500	July 13, 2012

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than : Pursuant to the actual suspension provision on page 4, Respondent will remain suspended until he pays restitution in full.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

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.

6. By failing to substantively respond to the Naujocks' status inquiries, 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).

7. By failing to provide the Naujocks with an accounting of the advanced fees and costs that they paid to him, 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)(3).

8. By failing to return the \$410 that the Naujocks paid to him for court filing fees, Respondent failed to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

Case No. 12-O-16312 (Complainant: Darlene Gomez)

FACTS:

9. On July 13, 2012, Darlene Gomez employed Respondent to represent her adult son, Daniel Gomez, in a criminal matter. Darlene Gomez paid Respondent \$2,500 in advanced attorney fees and advised Respondent that the next court appearance in her son's matter was set for August 15, 2012.

10. On August 15, 2012, Respondent failed to appear at Daniel Gomez's hearing. In the week after the hearing, Darlene Gomez telephoned Respondent and left messages for him. Respondent received the messages but did not respond to them, and he never communicated with Darlene Gomez after July 13, 2012. Also, Respondent never communicated with Daniel Gomez.

11. Respondent failed to obtain Daniel Gomez's written consent to Respondent's acceptance of compensation from Darlene Gomez. Respondent did not perform any services of value on behalf of Daniel Gomez, yet he also failed to provide Darlene Gomez with a refund of any portion of the unearned, advanced attorney fees she paid to Respondent for his representation of Daniel Gomez. Darlene Gomez was forced to hire another attorney to defend her son at additional cost without the benefit of a refund from Respondent.

12. On August 23, 2012, Darlene Gomez made a complaint against Respondent with the State Bar. On September 20, 2012 and October 5, 2012, a State Bar investigator sent letters to Respondent requesting a written response to the allegations of misconduct raised by Darlene Gomez's complaint by October 4, 2012 and October 18, 2012, respectively. Respondent received the letters. Respondent failed to respond to the investigator's letters or otherwise cooperate in the disciplinary investigation arising from Respondent's misconduct in the Darlene Gomez matter.

CONCLUSIONS OF LAW:

13. By failing to secure Daniel Gomez's written consent to Respondent's acceptance of compensation from Darlene Gomez on Daniel Gomez's behalf, Respondent accepted compensation for representing a client from one other than the client without obtaining the client's informed written consent in willful violation of Rules of Professional Conduct, rule 3-310(F).

14. By failing to refund the unearned, advanced attorney fees that Darlene Gomez paid to him for his representation of Daniel Gomez, 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).

15. By failing to respond to the investigator's letters, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of Business and Professions Code, section 6068(i).

Case No. 13-H-15082 (State Bar Investigation)

FACTS:

16. Effective April 24, 2012, the State Bar Court privately reprovved Respondent pursuant to a stipulation between Respondent and the State Bar in case no. 10-O-06776, and required him to comply with conditions attached to the reprovral for a period of one year.

17. One of the conditions of the reprovral required that Respondent submit quarterly reports to the Office of Probation for each January 10, April 10, July 10 and October 10 during the reprovral period. Respondent also was required to submit a final report on April 24, 2013, the expiration of the reprovral period. Another condition of the reprovral required that Respondent pay \$1,500 in restitution, plus interest, to former client Hajime Shimizu ("Shimizu"). A further condition of the reprovral required Respondent attend State Bar Ethics School and pass the exam given at the end of the session by April 24, 2013. Respondent was also required to pass the Multistate Professional Responsibility Examination ("MPRE") by April 24, 2013.

18. Respondent failed to submit the quarterly reports due on October 10, 2012, January 10, 2013, and April 10, 2013, and he failed to submit the final report due on April 24, 2013. Respondent also failed to pay the full amount of restitution owed to Shimizu, failed to attend State Bar Ethics School and failed to take and pass the MPRE.

19. In June 2012, Respondent made one payment to Shimizu in the amount of \$382, an amount sufficient to satisfy interest accrued to that date. Respondent has made no other attempts to satisfy the restitution requirement.

CONCLUSIONS OF LAW:

20. By failing to submit quarterly reports on October 10, 2012, January 10, 2013 and April 10, 2013, failing to submit a final report on April 24, 2013, failing to satisfy the restitution requirement, failing to attend State Bar Ethics School and pass the exam at the end of the session and failing to take and pass the MPRE, Respondent failed to comply with reprovral conditions in willful violation of Rules of Professional Conduct, rule 1-110.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has a prior record of discipline. Effective April 24, 2012, Respondent was privately reprovved for misconduct committed in 2012 involving a single client and consisting of violations of rule 3-110(A) of the Rules of Professional Conduct (failure to perform), and rule 3-700(D)(2) (failure to refund unearned fees). Respondent's prior

record of discipline is an aggravating circumstance. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156.)

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): In two client matters, Respondent has committed multiple violations of the Rules of Professional Conduct and the State Bar Act, including failing to: (1) perform on behalf of a client; (2) return unearned fees and client funds to a client; (3) obtain the written consent of his client to accept compensation from a third party; (4) communicate adequately with his client. In addition, Respondent failed to comply with multiple conditions attached to a private reproof. The commission of multiple acts of misconduct is an aggravating circumstance. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 105.)

Harm (Std. 1.2(b)(iv)): By failing to return the unearned attorney fees that he owes to Darlene Gomez and Hajime Shimizu, Respondent has caused financial harm to each of them. Harm to a client is an aggravating circumstance. (See *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117; Std. 1.2(b)(iv).)

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent has agreed to enter into a pre-trial stipulation, and thus is entitled to some mitigation. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

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 Silvertan* (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.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.2(b) which applies to Respondent’s violation(s) of Rules of Professional Conduct 4-100. Standard 2.2(b) provides

that 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 willful misappropriation of entrusted funds or property, shall result in at least a three-month actual suspension from the practice of law, irrespective of mitigating circumstances.

Here, in the Naujock matter, Respondent failed to provide the Naujocks with an accounting of the advanced fees and costs that they paid him and failed to return the unused advanced costs that they paid to him in violation of rule 4-100(B)(3) and rule 4-100(B)(4), respectively. In addition, Respondent failed to perform competently on behalf of the Naujocks and frequently failed to respond to their inquiries. In the Gomez matter, Respondent failed to obtain his client's written consent before receiving funds from a third party, failed to refund unearned fees and failed to cooperate in the subsequent disciplinary investigation arising from this misconduct. Respondent also failed to comply with multiple conditions attached to a prior private reproof, including a failure to pay restitution to Shimizu, a former client. The multiplicity of Respondent's violations, as described above, is a significant aggravating factor, as is the financial harm Respondent's misconduct caused Gomez and Shimizu. Finally, Respondent's recent private reproof is a significant aggravating factor.

Respondent's misconduct is mitigated by his willingness to enter into a pre-trial stipulation and his acknowledgement of the misconduct that he committed, thereby saving the State Bar Court both the time and expense of trial. However, the weight to be given to this mitigating circumstance is tempered by Respondent's failure to participate in the disciplinary investigation of the Gomez matter. On balance, these mitigating circumstances are not sufficiently compelling to warrant a deviation from standard 2.2(b), especially in light of the significant aggravating circumstances that are also present.

In light of Respondent's misconduct, standard 2.2(b), and the aggravating and mitigating circumstances, a discipline consisting of a two-year suspension, stayed, a three-year probation and a six-month actual suspension is appropriate and satisfies the purposes of attorney discipline as described in standard 1.3.

Case law supports this level of discipline as well. In *Matthew v. State Bar* (1989) 49 Cal.3d 784, an attorney with no prior discipline in a brief period of practice received a 60-day actual suspension for his failure to perform in three matters and a failure to refund unearned fees in two matters. In *Conroy v. State Bar* (1990) 51 Cal.3d 799, the attorney received a 60-day actual suspension for failing to complete a professional responsibility exam as required by a reproof condition. Respondent's misconduct in this matter includes conduct similar to the misconduct in the *Matthew* and *Conroy* cases, yet is additionally aggravated by multiple reproof condition failures and the fact that Respondent committed the misconduct in the Gomez matter during the reproof period. Therefore, a six-month actual suspension, as agreed to herein, is consistent with both the standards and case law.

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-12091	Four	Rules of Professional Conduct rule 3-700(D)(2)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of September 20, 2013, the prosecution costs in this matter are \$5,308. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the discipline herein. 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

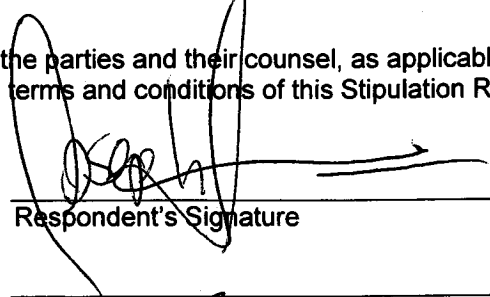
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School or State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JOSEPH SCLAFANI	Case number(s): 12-O-12091-RAP, et al.
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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.

9-25-13 _____  _____ Joseph Sclafani
Date Respondent's Signature Print Name

_____  _____ Print Name

9-25-13 _____ William Todd
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: JOSEPH SCLAFANI	Case Number(s): 12-O-12091-RAP, et al.
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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

OCTOBER 11, 2013


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 October 18, 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:

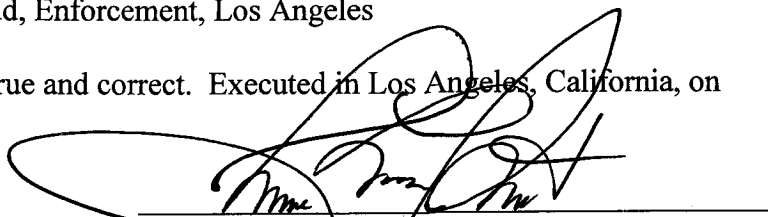
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOSEPH SCLAFANI
LAW OFFICES JOSEPH SCLAFANI
12981 PERRIS BLVD STE 113
MORENO VALLEY, CA 92553

- 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 October 18, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court