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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER
Counsel For The State Bar BRANDON K. TADY Senior Trial Counsel 845 South Figueroa Street Los Angeles, California 90017 213-765-1385 Bar # 83045	Case Number(s): 12-O-12597	For Court use only <div style="text-align: center;"> FILED SEP 01 2015 </div> <div style="text-align: center;"> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
Counsel For Respondent DAVID CAMERON CARR Law Offices of David Cameron Carr PLC 525 B Street, Suite 1500 San Diego, California 92101 619-696-0526 Bar # 124510	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING		
In the Matter of: THEODORE EDWARD MALPASS Bar # 112914 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 3, 1984**.
- (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 **15** 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, 2014)



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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):
- ☐ 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.** (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (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.
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, 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. **See attachment, page 11.**
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See attachment, page 11.**

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- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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:

No Prior Discipline: See attachment, page 12.
Pre-Trial Stipulation: See attachment, page 12.

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 1.2(c)(1) 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 **90 days**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), 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 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (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: None.**

(Do not write above this line.)

In the Matter of: Theodore Edward Malpass	Case Number(s): 12-O-12597
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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
Michael A. Madrid and Christina Madrid	\$16,000.00	October 17, 2011
Madrid Laser Screed Rentals, Inc.	\$26,000.00	October 17, 2011

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **30 days before the date that his three year disciplinary probation is scheduled to terminate.**

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.

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

CASE NUMBER: 12-O-12597

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.

PROCEDURAL HISTORY:

FACTS:

6. Respondent did not file an application for employment with the Bankruptcy Court before he charged and collected the \$10,000.00.

7. On June 1, 2011, Respondent and the Madrids signed a substitution of attorney to substitute Respondent as their attorney in the Madrid bankruptcy. This substitution was filed with the court.
8. On July 8, 2011, the Madrids paid Respondent an additional \$10,000.00 with a check from an account of Madrid Laser Screed. This \$10,000.00 payment was for Respondent's attorney's fees.
9. Respondent did not file an application for employment with the Bankruptcy Court before he charged and collected this second \$10,000.00 payment. The Bankruptcy Court never approved Respondent's employment by the Madrids.
10. On July 29, 2011, Respondent filed an ex parte application for an extension of time to file a revised Chapter 11 plan and disclosure statement. By an order dated August 2, 2011, the Bankruptcy Court granted an extension of time.
11. On August 17, 2011, the Madrids paid Respondent an additional \$8,000.00 for attorney's fees. Later, the Madrids made a second \$8,000.00 payment to Respondent. These payments were for attorney's fees.
12. Respondent did not file an application for employment with the Bankruptcy Court before he charged and collected the two \$8,000.00 payments. The Bankruptcy Court never approved Respondent's employment by the Madrids.
13. On September 29, 2011, the Madrids paid Respondent an additional \$6,000.00 with a check from Madrid Laser Screed's account. At that point, Respondent had received a total of \$42,000.00 for his legal work though he did not file an employment application with the court to obtain its authorization for his employment by the Madrids.
14. Although Respondent requested and received an extension of time from the Bankruptcy Court to file a revised Chapter 11 Plan and disclosure statement, he did not file those documents.
15. On October 3, 2011, the Office of the United States Trustee ("United States Trustee") filed a "Motion To Convert [to a Chapter 7 bankruptcy] or Dismiss the Madrids' bankruptcy petition."
16. On October 13, 2011, the Madrids terminated Respondent's employment.
17. On October 17, 2011, the Madrids formally substituted Respondent out as their attorney of record in the Madrid Bankruptcy.
18. On December 21, 2011, the United States Trustee filed a "Motion To Disgorge Attorney's Fees Paid To Debtor's Bankruptcy Counsel T. Edward Malpass" ("Motion"). In the Motion, the United States Trustee asked the Bankruptcy Court to order Respondent to disgorge the \$42,000.00 he received for attorney's fees from the Madrids and Madrid Laser Screed. The motion was based on Respondent's and the Madrids' failure to file with the Bankruptcy Court an application for employment.
19. On January 12, 2012, Respondent filed an "Opposition To United States Trustee's Motion To Disgorge."
20. On January 25, 2012, the Bankruptcy Court granted the motion to disgorge. This order was the second time that a Bankruptcy Court ordered Respondent to disgorge attorney's fees that he charged

and collected without first obtaining approval from the Bankruptcy Court. The first order was issued in different bankruptcy captioned *In re Harlan*.

21. On February 7, 2012, the Bankruptcy Court issued a formal written order requiring Respondent to disgorge \$16,000.00 to the Madrids and \$26,000.00 to Madrid Laser Screed within 30 days of the date of the order. The order was served upon Respondent and he promptly received same.

22. Respondent did not pay any portion of the \$42,000.00 within 30 days of the Bankruptcy Court's order.

23. On March 20, 2013, more than one year after the January 25, 2012 hearing, Respondent asked the Bankruptcy Court to modify the Order to delete the requirement that he disgorge the funds within 30 days. The Bankruptcy Court denied Respondent's request for a modification of the order.

24. During the March 20, 2013 hearing, Respondent told the Bankruptcy Court that he did not have the financial ability to obey the Court's order and make restitution to the Madrids and Madrid Laser Creed. The Bankruptcy Court declined to hold Respondent in contempt, or to sanction him, for disobeying the disgorgement order. Instead, it stated that the disgorgement order was a civil judgment that was enforceable by the Madrids and Madrid Laser Screed.

25. To date, Respondent has not paid any of the \$42,000.00.

CONCLUSIONS OF LAW:

26. By charging and collecting \$16,000.00 from the Madrids and \$26,000.00 from Madrid Laser Screed without obtaining the Bankruptcy Court's approval for his employment, Respondent entered into an agreement for, charged, and collected an illegal fee in willful violation of the California Rules of Professional Conduct, rule 4-200(A).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's misconduct significantly harmed the Madrids and Madrid Laser Screed. Respondent has not repaid any portion of the \$42,000.00 that the Bankruptcy Court ordered him to disgorge.

Indifference (Std. 1.5(g)): Respondent demonstrated indifference toward rectification and atonement for the consequences of his misconduct. In response to the United States Trustee's Motion to Disgorge, Respondent denied that he acted improperly by charging and collecting attorney's fees before an application for employment was approved by the Bankruptcy Court. At trial in this proceeding, Respondent repeated arguments that he made, and which were rejected, by the Bankruptcy Court in the Madrid Bankruptcy and in *In re Harlan*.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent practiced law in California for 26 years without any prior record of State Bar discipline. Although Respondent's misconduct is deemed serious, he is entitled to mitigating credit for years in practice without prior discipline (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, footnote 13).

Pre-trial stipulation: Respondent is entitled to limited mitigating credit for entering into a brief pre-trial stipulation of facts. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50). Respondent did not stipulate to culpability for any of the charged misconduct.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1 All further references to the Standards are to this source). The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.3(b) applies to Respondent's violation of rule 4-200(A). This standard provides a range of discipline of suspension to reproof for charging or collecting an illegal fee for legal services.

Here, Respondent is culpable of charging and collecting an illegal fee of \$42,000.00. There are two significant aggravating circumstances. He caused harm to the Madrids and Madrid Laser Screed and he demonstrated indifference toward rectification and atonement. Respondent's 26 years in practice without prior discipline is a mitigating circumstance. However, the weight of this mitigating circumstance is tempered by Respondent's indifference toward rectification and atonement (*Cooper vs. State Bar* (1987) 43 Cal. 3d 1016). His entering into a pre-trial stipulation of facts has limited weight in mitigation because he did not stipulate to culpability.

The recommended discipline of two years stayed suspension and a three year probation with conditions including a 90 day actual suspension and the requirement that Respondent make restitution of \$42,000.00 is within the range of discipline of standard 2.3(b). The 90 day actual suspension requires Respondent to comply with California Rules of Court, rule 9.20.

The parties arrived at this discipline recommendation by considering the aggravating and mitigating circumstances and how they relate to each other and the sanction that is necessary to accomplish the goals of attorney discipline including to protect the public, the courts, and the legal profession, to maintain the highest professional standards, and to preserve the public's confidence in the legal profession. Respondent's lack of insight and the harm he caused the Madrids are significant aggravating circumstances that support the imposition of actual suspension. The two mitigating circumstances do not outweigh the aggravating circumstances. Therefore, a sanction in the middle of the range of standard 2.3(b), one that includes actual suspension is appropriate here.

The Review Department's opinion in *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266 ("*Harney*") supports the stipulated discipline.

In *Harney*, the Review Department found that respondent Harney was culpable of charging and collecting an illegal fee in a medical malpractice case, of failing to refund an unearned fee, and of committing an act involving moral turpitude, dishonesty, or corruption by his grossly negligent failure to disclose material information about MICRA limitations on attorney's fees to his client and to the court. It found three aggravating circumstances: respondent had a prior record of discipline (a public reproof), his misconduct harmed his client, and he demonstrated a lack of candor by his persistent attempts to portray himself as a victim of MICRA which he disingenuously described as "uncertain" (*In the Matter of Harney, supra*, at p. 283). The Review Department did not find any mitigating circumstances. It recommended that Harney be placed on two years stayed suspension and a two year probation with conditions including a six month actual suspension.

DISMISSALS.

Prior to the commencement of trial, the State Bar dismissed count one of the Notice of Disciplinary charges. The parties respectfully ask the Court to dismiss the following alleged violation in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-12597	Three	Failure To Obey A Court Order (Business and Professions Code, section 6103)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of July 16, 2015, the prosecution costs in this matter are \$15,660.00. 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 Ethics School ordered as a condition of discipline. (Rules Proc. State Bar, rule 3201).

(Do not write above this line.)

In the Matter of: Theodore Edward Malpass	Case number(s): 12-O-12597
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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.

August 4
2015

Date

August 7
2015

Date

August 12
2015

Date

Theodore E Malpass

Respondent's Signature

David C. Carr

Respondent's Counsel Signature

Brandon K. Tady

Deputy Trial Counsel's Signature

SENIOR

Theodore Edward Malpass

Print Name

David Cameron Carr

Print Name

Brandon K. Tady

Print Name

(Do not write above this line.)

In the Matter of:
THEODORE EDWARD MALPASS

Case Number(s):
12-O-12597

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.

1. At the caption on top of page 1, "Hearing" is deleted and replaced with "Review".

2. As the parties' tentative agreement regarding the disposition of this matter was reached prior to the July 1, 2015 effective date of revisions to the Standards for Attorney Sanctions for Professional Misconduct (Standards), the court finds it appropriate in this matter to apply the Standards which were in effective from January 1, 2014 to June 30, 2015.

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.)**

September 1, 2015
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, 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. 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 September 1, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING FILED SEPTEMBER 1, 2015

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

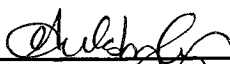
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR PLC
525 B ST STE 1500
SAN DIEGO, CA 92101**

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

BRANDON K. TADY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 1, 2015.



Jasmine Guladzhyan
Case Administrator
State Bar Court