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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number): 12-O-12875 12-O-13576</p>	<p>For Court use only</p> <p style="text-align: center;">FILED</p> <p style="text-align: center;">APR 17 2013 <i>HC</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Dana Allan Godfrey 2 Park Plaza, Suite 1050 Irvine, California 92614 949-390-5270</p> <p>Bar # 152913</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of: Dana Allan Godfrey</p> <p>Bar # 152913</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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 6, 1991.
- (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 14 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."

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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 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.
- (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.

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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. See attachment, page 11.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

See attachment page 11. In addition, as discussed below, respondent is culpable of two uncharged violations of the Rules of Professional Conduct, rule 3-700(D)(2), which are aggravating circumstances under standard 1.2(b)(iii).

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:

Respondent is entitled to significant mitigation as a result of his twenty-one (21) plus years of discipline-free practice under Standard 1.2(e)(i). See attachment, page 11.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of one (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:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two (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)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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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 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**

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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:** Client Trust Account School: As a condition of probation, 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 the Client Trust Accounting School, and passage of the test given at the end of that session.

Accountings: As a condition of probation, Respondent shall provide accountings to Norma Guillen for the \$5,000.00 advanced fees, and to Marissa Boone for the \$3,500.00 advanced fees no later than 30 days after the effective date of the discipline herein and provide proof of such to the Office of Probation with his next due quarterly report.

Restitution: As a condition of probation, Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payees listed herein. If the Client Security Fund has reimbursed one or more of the payees for all or any portion of the principal amounts listed below, Respondent must also pay restitution to the Client Security Fund in the amounts paid, plus applicable interest and costs.

Payee: Norma Guillen-Contreras; principal amount \$2,375.00, interest accruing from December 9, 2010.

Payee: Marissa Boone; principal amount \$1,945.00, interest accruing from July 29, 2010. Respondent must pay the above-referenced restitution on the following payment schedule: Payments are to begin no later than 30 days after the effective date of the discipline herein. Payments to Guillen-Contreras in the amount of \$200.00 per month until satisfied in full. Payments to Boone in the amount of \$200.00 per month until satisfied in full. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probationary report, or as otherwise directed by the Office of Probation.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Dana Allan Godfrey
CASE NUMBER(S): 12-O-12875 and 12-O-13576

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 12-O-12875 (Complainant: Norma Guillen)

FACTS:

1. On May 15, 2009, Respondent was retained by Norma Guillen-Contreras (hereinafter "Guillen") to pursue a marital dissolution on her behalf. At the time of the execution of the retainer agreement, Guillen paid Respondent \$5,000 as advanced attorney's fees and costs. The retainer agreement provided for monthly billing statements to be provided to the client by Respondent. At the time of the execution of the retainer, Respondent was a sole practitioner whose offices were located at 556 North Diamond Bar Blvd., Suite 109, Diamond Bar, California 91765.

2. On May 18, 2009, Respondent filed the dissolution petition on behalf of Guillen in the San Bernardino Superior Court, Case No. FAMRS 901586, commencing the action (hereinafter "the dissolution proceeding").

3. On May 24, 2010, Respondent commenced employment as an associate with Hughes & Sullivan, whose offices were located in Tustin, California. For six months Guillen was unaware of Respondent's new associate position and was unable to communicate with him regarding the dissolution proceeding. During this same period of time Guillen repeatedly went to Respondent's Diamond Bar address in search of him only to find accumulated mail and a landlord unaware of his whereabouts.

4. On October 13, 2010, an initial status conference was conducted within the dissolution proceeding, at which time Respondent failed to appear. As a result of the failure to appear, the status conference was continued to December 7, 2010.

5. It was not until November 26, 2010, that Respondent wrote to Guillen advising her of his new position and contact information. Respondent did not inform Guillen that he had failed to appear at the initial status conference in the dissolution proceeding set for October 13, 2010.

6. On September 20, 2011, there was scheduled a Mandatory Settlement Conference in the dissolution proceeding which Respondent failed to attend. At no time did Respondent advise Guillen that he had failed to appear at the mandatory settlement conference set for September 20, 2011.



7. On November 26, 2010, Respondent wrote to Guillen advising her of his new position and inviting her to execute a replacement retainer agreement. On November 30, 2010, Guillen executed the proposed replacement retainer which reflects that no additional advance of attorney's fees or costs are required. The replacement retainer was silent as to how much, if any, of the amount of the original advanced fees of \$5,000, remained available to address continuing attorney's fees and costs incurred in litigating the dissolution proceeding.

8. On December 9, 2010, Respondent filed the substitution of attorney replacing himself with his new firm, Hughes & Sullivan, as attorney of record on behalf of Guillen.

9. The original retainer executed by Guillen on May 15, 2009, provided for monthly billing statements reflecting services performed by Respondent within the dissolution proceeding to be furnished to Guillen. Guillen received no billing statements reflecting activities and services performed by Respondent prior to his association with Hughes & Sullivan which commenced on May 24, 2010.

10. On December 10, 2010, February 11, 2011, and May 11, 2011, Guillen received billing statements from the offices of Hughes & Sullivan reflecting services performed on her behalf within the dissolution proceeding which did not reflect any credit for the \$5,000 previously advanced by Guillen. Receipt of these statements prompted Guillen to request of Respondent an accounting of the original advanced fees of \$5,000.

11. On May 19, 2011, Guillen transmitted an e-mail request to Respondent inquiring as to the status of an itemized billing request regarding the original \$5,000 advanced fees she had earlier directed to Respondent that had not been responded to.

12. On June 24, 2011, Guillen again inquired of Respondent by e-mail as to the status of the promised itemized billing which she had not yet received.

13. Respondent failed to provide Guillen with an itemized billing statement reflecting the disposition of the original \$5,000 advanced fees.

14. On September 20, 2011, there was scheduled a Mandatory Settlement Conference in the dissolution proceeding which Respondent failed to attend.

15. When Guillen was made aware of the non-appearance by Respondent at the scheduled Mandatory Settlement Conference, she attempted unsuccessfully to secure an explanation from Respondent. Frustrated with Respondent's lack of responsiveness, Guillen advised the billing department at Hughes & Sullivan that she would not be honoring any further billing statements sent from them.

16. Acting upon Respondent's suggestion, Guillen secured replacement counsel, Alesha Donoso, on October 13, 2011, who appeared at the next scheduled appearance on behalf of Guillen on November 22, 2011, in the dissolution proceeding. On January 6, 2012, Ms. Donoso filed with the court a substitution replacing her offices for Hughes & Sullivan on behalf of Guillen. The filed substitution reflected that Respondent executed it on November 16, 2011.

17. Thereafter Guillen made a complaint to the State Bar, the State Bar opened an investigation of the matter.

18. On May 15, 2012, a State Bar investigator mailed a letter to Respondent at his State Bar membership records address requesting that Respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation. Respondent received the investigative letter.

19. Respondent has not responded to the allegations under investigation as requested by either the investigator or the complaint analyst.

20. Respondent has provided to the State Bar an accounting for the fees received from Guillen at the time of the submission of this stipulation evidencing those services performed on behalf of the client prior to his association with Hughes & Sullivan, which indicated that \$2,375.00 of the fees paid by Guillen had not been earned.

CONCLUSIONS OF LAW.

21. By not informing Guillen that he had taken a new position with a different firm and had shut down his former office, and by failing to advise Guillen that he had failed to appear at scheduled court appearances, Respondent wilfully failed to keep a client reasonably informed of a significant development in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).

22. By failing to perform services on Guillen's case for six months after taking an associate position with another law firm and failing to appear at the initial status conference on October 13, 2010, and the scheduled mandatory settlement conference set for September 20, 2011, within the dissolution proceeding, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

23. By failing to provide Guillen after multiple requests with an itemized billing statement evidencing the disposition of the original \$5,000 advance fees, 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).

24. By not providing any response to the allegations under investigation as requested by the complaint analyst and assigned investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code section 6068(i).

25. By not promptly refunding the \$2,375 in unearned fees to Guillen after respondent's individual representation of Guillen under his May 15, 2009, retainer agreement terminated on December 9, 2010, respondent failed to promptly refund the part of a fee paid in advance that had not been earned after his employment terminated in willful violation of Rules of Professional Conduct, rule 3-700(D)(2). Because the State Bar did not charge respondent with violating rule 3-700(D)(2), this rule 3-700(D)(2) violation is considered only for purposes of aggravation under standard 1.2(b)(iii) (other violations). (See, e.g., *Edwards v. State Bar* (1990) 52 Cal. 3rd 28, 35-36 [uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].)

FACTS:

26. On February 15, 2010, Respondent was retained by Marissa Boone (hereinafter "Marissa") to defend her in a child custody/ visitation matter, styled Solano v. Montanes, Case No. FAMRS 1000275, filed in the San Bernardino Superior Court, West District, (hereinafter "Solano matter"). At the time that she executed the retainer agreement, Marissa paid Respondent \$3,500 in advance fees and costs. The retainer agreement provided that monthly statements were to be directed to Marissa reflecting services and activities performed by Respondent in defending this matter. At no time did Respondent provide Marissa with a monthly billing statement pursuant to this retainer agreement.

27. On May 24, 2010, Respondent commenced his employment with Hughes & Sullivan. The retainer agreement provided that monthly statements were to be directed to Marissa reflecting services and activities performed by Respondent in defending this matter. No such monthly statements were provided by Respondent prior to his association with Hughes & Sullivan.

28. On July 29, 2010, Marissa executed a replacement retainer agreement provided by Respondent replacing Respondent with Hughes & Sullivan as attorney of record on behalf of Marissa. No additional advance fee was required by this new retainer agreement.

29. On August 23, 2010, Respondent filed with the court an executed substitution of attorney replacing himself with Hughes & Sullivan as attorney of record on behalf of Marissa.

30. At no time did Respondent provide to Marissa an itemized billing statement pursuant to her request reflecting services performed and the status of the original \$3,500 advanced fee retainer. Marissa had made repeated requests during the course of the litigation for an itemized billing statement while this matter was pending.

31. On August 23, 2011, the court entered an order resolving the Solano matter. On September 26, 2011, Hughes & Sullivan filed their withdrawal as attorney of record on behalf of Marissa in the Solano matter restoring her to a pro per capacity.

32. It was not until August 10, 2011, that Marissa received billing statements reflecting services performed by Respondent with respect to the Solano matter from Hughes & Sullivan in the amount of \$1,260.25. The billing statement did not reflect an itemized breakdown of what services were performed or when on behalf of Marissa. At no time did Respondent account to Marissa for the remaining \$2,239.75 advanced by Marissa.

33. On May 18, 2012, the State Bar commenced a disciplinary investigation concerning Respondent's conduct based on a complaint filed by Marissa.

34. On May 18, 2012, a State Bar investigator mailed a letter to Respondent at his State Bar membership records address requesting that Respondent cooperate and participate in the investigation of Marissa's complaint by providing a written response to the allegations under investigation. Respondent received the letter.

35. Respondent did not respond to the allegations under investigation as requested by the investigator.

36. Respondent has provided to the State Bar an accounting for the fees advanced by Boone at the time of the submission of this stipulation evidencing "use services performed on behalf of the client prior to his association with Hughes & Sullivan, which indicated that \$1,945.00 of the fees paid by Boone had not been earned.

CONCLUSIONS OF LAW.

37. By failing to provide Marissa after multiple requests with an itemized billing statement evidencing the disposition of the original \$3,500 advanced fees, 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).

38. By not providing any response to the allegations under investigation as requested by the complaint analyst and assigned investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code section 6068(i).

39. By not promptly refunding the \$1,945 in unearned fees to Marissa after respondent's individual representation of Marissa under his February 1, 2010, retainer agreement terminated on July 29, 2010, respondent failed to promptly refund the part of a fee paid in advance that had not been earned after his employment terminated in willful violation of Rules of Professional Conduct, rule 3-700(D)(2). Because the State Bar did not charge respondent with violating rule 3-700(D)(2), this rule 3-700(D)(2) violation is considered only for purposes of aggravation under standard 1.2(b)(iii) (other violations). (See, e.g., *Edwards v. State Bar*, *supra*, 52 Cal. 3rd at pp. 35-36.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES

No Prior Discipline – Although his misconduct is serious, Respondent is entitled to significant mitigation by virtue of his twenty-one plus years of discipline free practice. *Hawes v. State Bar* (1990) 51 Cal. 3rd 587, 596. See also *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, citing *Rodgers v. State Bar* (1989) 48 Cal. 3rd 300, 317; *Cooper v. State Bar* (1987) 43 Cal. 3rd 1016, 1029 and noting that, standard 1.2(e)(i), the Supreme Court has repeatedly given mitigation for no prior record of discipline in cases in which the misconduct was serious.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct, Standard 1.2 (b)(ii) -- Respondent committed multiple acts of misconduct, specifically violations of Rules of Professional Conduct, rule 3-110(A) and 4-100(B)(3) as well as Business and Professions Code sections 6068(i) and 6068(m). *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93.

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 eight 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 of Rule of Professional Conduct, rule 4-100(B)(3). Standard 2.2(b) provides that culpability of a member of the commission of a violation of rule 4-100, which offense does not 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.

In this case, the violation is a failure to account for unearned fees, not entrusted funds, which standard 2.2(b) was intended to address. Standard 2.2(b) was adopted prior to the decision in which the court determined that the duty to account set forth in rule 4-100 applied to advanced fees. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) Therefore, a consideration of mitigating and aggravating factors may warrant a deviation from that standard.

The California Supreme Court has acknowledged that mitigation evidence is relevant in assessing whether the discipline set forth in a given standard is necessary or appropriate to deter future misconduct or serve other purpose of attorney discipline. (See *Guzetta v State Bar* (1987) 43 Cal. 3rd 962, 981.) Respondent’s lack of a prior record over many years of practice warrants significant weight in mitigation. (See *Edwards v State Bar* 52 Cal. 3rd 28.) This period of discipline-free practice, as well as the facts of this case, suggest that the misconduct herein was aberrational and will not likely be repeated. Balancing this mitigation against the harm caused to the clients warrants a deviation from standard 2.2(b).

As demonstrated by Respondent’s participation in drafting this stipulation, Respondent has recognized the professional misconduct associated with neglecting to account to his clients, keep them abreast of significant developments in their matters and cooperate with the State Bar. Though his recognition of these facts is commendable, discipline remains necessary to protect the public, the courts, and the legal profession. Therefore, the appropriate level of discipline here in a one year suspension, stayed, with an actual suspension of thirty days, together with a two year probationary period. Respondent will also be

required to attend State Bar Ethics School, pass the Multistate Professional Responsibility Exam and successfully complete Client Trust Accounting School as well as pay the required disciplinary costs associated with this matter. In addition, respondent will be required to refund \$2,375 in unearned fees to Guillen and \$1,945 in unearned fees to Marissa.

The stipulated disposition is consistent with case law. In *Bach v. State Bar* (1991) 52 Cal. 3rd 1201, a 30 day actual suspension was imposed upon an attorney in a single client matter who had failed to perform legal services competently, improperly withdrew from representation, failed to refund unearned fees, and failed to cooperate in the State Bar investigation. In mitigation, Bach had no prior record of discipline after 20 years of practice. In aggravation, the attorney denied responsibility for the delay, cost, anxiety, and inconvenience imposed upon the client by virtue of respondent's misconduct and refused to participate in mandatory fee arbitration.

In *Layton v. State Bar* (1991) 50 Cal 3rd 889, a 30 day actual suspension was imposed where an attorney failed to use reasonable diligence to accomplish the purposes for which he was employed, failed to perform legal services competently, and violated his duties as an attorney. Layton, in mitigation, had no prior discipline history in thirty years of practice and the current misconduct did not evidence a pattern of misconduct. There were no aggravating factors.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 12, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 12, 2013, the prosecution costs in this matter are approximately \$6,322. 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

The probation conditions requiring respondent to attend and successfully complete Ethics School and Client Trust Accounting School are separate and apart from respondent's Minimum Continuing Legal Education ("MCLE") requirements. Accordingly, respondent is not to claim any MCLE credit for attending or completing either Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)



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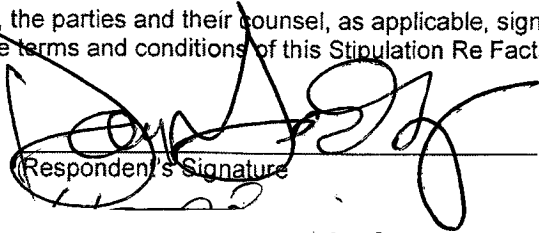
In the Matter of: DANA ALLAN GODFREY	Case number (s): 12-O-12875; 12-O-13576
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SIGNATURE OF THE PARTIES

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.

3/18/13

Date



Respondent's Signature

Dana Allan Godfrey

Print Name

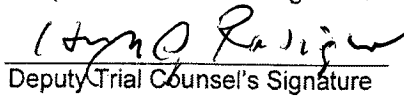
Date

Respondent's Counsel Signature

Print Name

March 25 '13

Date



Deputy Trial Counsel's Signature

Hugh G. Radigan

Print Name



(Do not write above this line.)

In the Matter of: DANA ALLAN GODFREY	Case Number(s): 12-O-12875; 12-O-13576
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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 the date.** (See rule 9.18(a), California Rules of Court.)

4/16/13
Date


DONALD F. MILES
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 April 17, 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:

DANA A. GODFREY
GODFREY LAW GROUP
324 S DIAMOND BAR BLVD # 194
DIAMOND BAR, CA 91765

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 17, 2013.



Angela Carpenter
Case Administrator
State Bar Court