

State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>Maria J. Oropeza Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2569</p> <p>Bar # 182660</p>	<p>Case Number(s): 12-O-13 114</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED <i>R</i></p> <p>SEP 23 2013</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Joseph Michael Biasella, Jr. P.O. Box 6428 San Jose, CA 95150 (408) 849-7411</p> <p>Bar # 53160</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p>ALTERNATIVE DISCIPLINE PROGRAM</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JOSEPH MICHAEL BIASELLA, JR.</p> <p>Bar # 53160</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1972.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 5.386(D)(2) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 8 pages, excluding the order.

(Effective January 1, 2011)

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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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.
- (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 6.)
- (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. (See Attachment page 6.)
- (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. (See Attachment page 6-7.)
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

11. Respondent executed a promissory note for the \$62,000 loan which did not indicate the date payable, and only indicated the interest rate of 10% per annum. The note was not secured with any property.

12. On April 15, 2011, respondent took a second loan in the sum of \$21,000 from the conservatorship. Respondent had Hockman approve the loan. Hockman gave respondent the full sum of \$21,000 from funds designated for the care of Jones. This withdrawal of funds designated for the care of Jones was not approved by the probate court and was not permitted under the order approving the conservatorship.

13. Respondent executed a promissory note for the \$21,000 loan which did not indicate a date payable, and only indicated the interest rate of 10% per annum. The note was not secured with any property.

14. Prior to entering into the loan transactions of December 1, 2010 and April 15, 2011 and receiving the funds from the conservatorship, respondent did not place in writing all of the terms and conditions of the two loans from his clients. The terms of the loans were neither fair nor reasonable.

15. Prior to receiving the funds for the two loans, respondent did not advise his clients in writing that they could seek independent counsel to discuss the terms and conditions of the loans.

16. Respondent did not afford his clients the opportunity to seek independent counsel prior to the transactions.

17. The clients never consented in writing to the terms of the loans.

18. On January 31, 2012, respondent filed a declaration of counsel in support of an ex-parte request to continue the hearing date set for an accounting of the conservatorship funds and assets.

19. On April 4, 2012, respondent filed a declaration for ex-parte application for authority to sell property of the estate. In the declaration, respondent revealed that he had personally borrowed monies from the conservatorship without court approval, that he could not repay the loans, and that the estate was now unable to meet the conservatee's financial needs.

20. By April 4, 2012, respondent had paid \$9,000.00 as a partial payment of the funds he had borrowed.

21. On April 13, 2012, the court suspended the conservators and appointed the public guardian as temporary conservator with medical authority.

22. Respondent's conduct subjected Hockman and Miller to liability for the unapproved loans they made to respondent, pursuant to Probate Code Section 2401.3. As the loans were not secured with any property and respondent had no means to pay the loans back to the conservatorship, Hockman and Miller were liable for restitution to the conservatorship.

23. Respondent induced Hockman into releasing funds designated for the care of Jones to him for his own personal use, thereby having Hockman violate her fiduciary duty to the conservatee Jones pursuant to Probate Code Section 2401.3

24. Neither Hockman, nor respondent, sought court approval for the loans made in December 2010 and April 2011 from the conservatorship funds as required by Probate Code Section 2590, et seq.

25. Neither Hockman, nor respondent accounted for the loans in the biannual accounting due to the court as required by Probate Code § 2620.

26. Respondent had a fiduciary duty to the conservators and to the conservatee.

27. Respondent twice induced Hockman to release funds to him for his own use, and did not explain to Hockman that by doing so she was breaching her duties as a conservator.

28. Respondent was fully aware that the promissory notes he executed were not secured in any manner.

29. Respondent was fully aware when he induced Hockman to release the funds belonging to the conservatorship that he had no basis at the time to repay the funds to the conservatorship.

30. At no time, after requesting the funds and receiving the funds did respondent explain to Hockman and Miller that they had breached their duties as a conservator.

31. Respondent was fully aware that Hockman and Miller would be liable for non-authorized release of the funds and repayment of the funds.

32. On April 17, 2013, respondent paid the sum of \$93,935.00 to the Estate of Jones by submitting payment to Hockman and Miller, who were required to restore the funds to the Estate of Jones. The payment represented full payment of the funds that respondent had borrowed from the Estate of Jones.

CONCLUSIONS OF LAW:

33. By borrowing funds from the conservatorship without the ability to repay the funds, placing the conservatee (Jones) at risk and making the conservators (Hockman and Miller) liable for his misconduct, and by failing to explain this liability to Hockman and Miller, respondent committed acts involving moral turpitude, dishonesty or corruption, a wilful violation of Business and Professions Code section 6106.

34. By inducing Hockman to release funds from the conservatorship, and failing to seek court approval for the release of the funds, thereby violating multiple sections of the probate code, respondent failed to support the Constitution and laws of the United States and of this state, respondent committed a wilful violation of Business and Professions Code section 6068(a).

35. By failing to set forth in writing all of the terms and conditions of both loans, failing to advise his clients that they could seek independent counsel, failing to allow his clients the opportunity to seek counsel, failing to obtain his clients consent in writing to the terms and conditions of the transactions, and entering into the loans which had terms that were not fair, respondent entered into an improper business transaction with a client, in wilful violation of rule 3-300 of the Rules of Professional Conduct.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.2(b)(ii): Respondent committed multiple violations of the State Bar Act in a single client matter.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.2(e)(i): Respondent has no prior record of discipline and was admitted into practice on December 13, 1972. Respondent has had 39 years of discipline free practice and is entitled to limited mitigation, given that the present misconduct is serious in nature. (*In the Matter of Riordan* (Review Dept 2007) 5 Cal State Bar Ct. Rptr. 41, 49)

Candor/Cooperation (Std. 1.2(e)(v): Respondent admitted his misconduct by submitting a declaration to the Superior Court of Santa Clara without threat of civil or criminal action. In addition, respondent has cooperated with the State Bar and is not contesting his culpability in this matter.

Severe Financial Stress: Respondent was suffering from multiple medical problems (severe angina, heart condition; a viral infection of the loin region, depression) which began in 2010 and experienced unforeseen medical expenses and financial distress, prior to and about the time of his misconduct. Respondent was evicted from his home in June 2012. Respondent took the loans from the conservatorship to help address his medical and financial distress. Respondent was able to repay the

loans after his mother passed away and he received an inheritance. (*Grim v. State Bar* (1991) 53 Cal. 3d. 21, 31)

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was July 16, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 16, 2013, the prosecution costs in this matter are \$5,418.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JOSEPH MICHAEL BIASELLA, JR.	Case number(s): 12-0-13114
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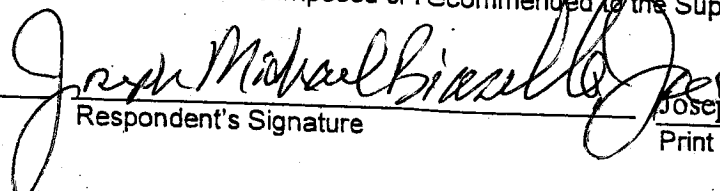
SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

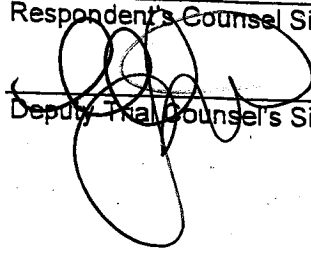
Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

7/17/13  _____
 Date Respondent's Signature Joseph Michael Biasella, Jr.
 Print Name

_____ _____
 Date Respondent's Counsel Signature Print Name

7/18/13  _____
 Date Deputy Trial Counsel's Signature Maria J. Oropeza
 Print Name

In the Matter of: JOSEPH MICHAEL BIASSELLA, JR.	Case Number(s): 12-O-13114
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ALTERNATIVE DISCIPLINE PROGRAM ORDER

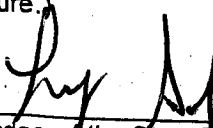
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

Sept 23, 2013


Judge of the State Bar Court

LUCY ARMENDARIZ

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 San Francisco, on September 23, 2013, I deposited a true copy of the following document(s):

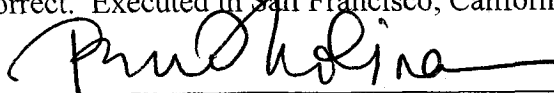
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

JOSEPH MICHAEL BIASSELLA, JR.
PO BOX 6428
SAN JOSE, CA 95150

MARIA J. OROPEZA
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 23, 2013.



Bernadette C.O. Molina
Case Administrator
State Bar Court