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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Treva R. Stewart 180 Howard Street San Francisco, CA 94105 (415) 538-2452 Bar # 239829	Case Number(s): 12-O-13163-LMA	For Court use only PUBLIC MATTER FILED 16 MAR 19 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Gaspar Roberto Garcia II 7 Park Vista Circle Sacramento, CA 95831 (916) 710-1048 Bar # 215762	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Gaspar Roberto Garcia II Bar # 215762 A Member of the State Bar of California (Respondent)		

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 3, 2001.
- (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.



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- (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 16 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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: three billing cycles 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 [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. See "Facts Supporting Aggravating Circumstances", attachment page 12.
- (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 "Facts Supporting Aggravating Circumstances", attachment page 13.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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

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- (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:

See "Facts Supporting Mitigating Circumstances", attachment page 13.

D. Discipline:

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

(2) **Probation:**

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

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of one 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:

E. Additional Conditions of Probation:

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- (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.
- (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 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:**

10. On October 18, 2010, Rowena Altaha sent respondent an email with an attached letter from CALTRANS' Office of Business and Economic Opportunity scheduling a hearing for reconsideration of C2PM's decertification from the Disadvantaged Business Enterprise Certification Program, for November 2, 2010, at 1:30 p.m. in Los Angeles, CA ("decertification hearing"). Respondent received the email and the attachment shortly after October 18, 2010.

11. On October 28, 2010, the court issued a tentative ruling on the MSJ. Respondent did not notify the court or opposing counsel of his intent to contest the court's tentative ruling as required by local court rules.

12. On October 29, 2010, respondent appeared at the hearing with the intent to contest the tentative ruling. Respondent was late arriving for the hearing. Respondent was sanctioned \$250 for failing to previously notify the court and opposing counsel of his intent to contest the court's tentative ruling and his late appearance. The court continued the hearing to November 2, 2012, at 1:30 p.m., the same time as the previously scheduled decertification hearing.

13. Respondent failed to move to continue the MSJ.

14. Respondent failed to properly and timely move to continue the decertification hearing.

15. On November 2, 2010, respondent appeared for the MSJ hearing.

16. On November 2, 2010, respondent failed to appear, or arrange for representation of C2PM, at the decertification hearing.

17. On November 2, 2010, C2PM's certification in the Disadvantaged Business Enterprise Certification Program was forfeited for failure to appear at the hearing.

18. On December 1, 2010, the MSJ was granted.

19. On December 27, 2010, judgment was entered against C2PM, Inc., in case no. RG08409876.

20. After January 20, 2011, respondent agreed to file an appeal on behalf of C2PM, Inc.

21. On February 28, 2011, respondent filed a notice of appeal in case no. RG08409876. The Court of Appeal assigned the appeal case number A131329 ("case no. A 131329").

22. The Appellant's Opening Brief ("AOB") in case no. A 131329 was due by June 14, 2011.

23. Respondent failed to file the AOB by June 14, 2011.

24. On July 20, 2011, respondent requested and was granted an extension until August 9, 2011, to file the AOB. Respondent failed to file the AOB by August 9, 2011, or anytime thereafter.

25. On August 23, 2011, the Court of Appeal dismissed case no. A131329 for failure to file an AOB. The dismissal was served on respondent and he was aware of the dismissal shortly after August 23, 2011.

26. Respondent did not inform the Altahas of the dismissal in case no. A131329. The Altahas learned of the dismissal by viewing the court's web site.

27. On September 2, 2011, Rowena Altaha sent an email to respondent requesting an explanation of the dismissal in case no. A131329. Respondent received the email. Respondent did not respond.

28. On September 9, 2011, respondent told Rowena Altaha that he was working on the AOB, even though he knew that the appeal had been dismissed on August 23, 2011.

29. On September 13, 2011, Rowena Altaha attempted to call respondent at his office telephone number. Respondent's telephone number was disconnected. Respondent had not previously notified the Altahas that his number would be disconnected.

30. On September 13, 2011, Rowena Altaha sent a certified letter to respondent requesting an update and explanation regarding the dismissal. Respondent received the letter on September 14, 2011. Respondent did not respond.

31. On September 22, 2011, Rowena Altaha sent an email to respondent requesting an explanation regarding the dismissal. Respondent received the email. Respondent did not respond.

32. On November 14, 2011, respondent falsely told Rowena Altaha that the AOB was almost finished and ready to be filed with the court.

33. In truth and in fact, respondent had not drafted an AOB, and even if he had, an AOB could not be filed in case no. A131329 because the case had been dismissed.

34. Respondent misrepresented to the Altahas that he could file the AOB and such filing would reverse the dismissal.

35. On November 16, 2011, respondent called Rowena Altaha and stated that he was going to email her a final draft of the AOB within an hour. Respondent did not email Altaha the AOB.

36. Later that same day, respondent sent Rowena Altaha an email assuring the Altahas that they did not have to worry about the dismissal, and that he was going to "fix the problem with the court." Respondent again promised to send Rowena Altaha a copy of final draft of the AOB via email. Respondent did not email Rowena Altaha the AOB.

37. Respondent never provided the Altahas a draft AOB, nor did he ever file an AOB on behalf of C2PM, Inc.

38. As of November 23, 2011, the Altahas terminated respondent's services.

39. On November 23, 2011, the Altahas retained new counsel, Steven Iriki ("Iriki").

40. On December 2, 2011, Rowena Altaha sent an email to respondent requesting that he return C2PM's files. Respondent received the email. Respondent did not return the files.

41. On December 15, 2011, and on December 19, 2011, Iriki sent correspondence to respondent requesting that he sign and return a substitution of attorney and return C2PM's files. Respondent received the correspondence. Respondent did not respond.

42. On December 19, 2011, Rowena Altaha sent an email to respondent requesting that he sign and return a substitution of attorney and return C2PM's files. Respondent received the email. Respondent did not sign and return a substitution of attorney or return the files.

43. Respondent never signed a substitution of attorney.

44. On January 7, 2012, Rowena Altaha sent an email to respondent requesting that he return C2PM's files as soon as possible. Respondent received the email.

45. On January 9, 2012, respondent sent an email to Altaha indicating that the paper files were ready to be picked up, however he needed additional time for electronic documents.

46. On January 9, January 10, January 11 and January 12, 2012, Rowena Altaha sent emails to respondent requesting a time to pick-up the files. Respondent received the emails. Respondent did not respond.

47. On January 24, 2012, Rowena Altaha sent respondent a certified letter requesting C2PM's files. Respondent received the letter. Respondent did not respond.

48. Between July 17, 2007, and November 16, 2011, respondent charged, and the Altahas paid \$284,581.83 for legal services.

49. The amount of the fees was grossly disproportionate to the value of the services performed by respondent.

50. Between July 2010 and October 2010, the Altahas provided respondent a credit card to utilize for paying costs related to C2PM, Inc.'s matter. The Altahas never authorized respondent to utilize their credit card for any other purpose.

51. On October 25, 2010, respondent caused the Altahas' credit card to be charged \$204.95 to pay costs on behalf of another client. The Altahas did not authorize the charge. The Altahas deducted the charge from a subsequent billing.

52. Respondent acted with gross negligence in causing the Altahas' credit card to be utilized to pay costs on behalf of another client, without the Altahas' authorization.

53. On January 6, 2012, Rowena Altaha filed a State Bar complaint against respondent.

54. On May 11, 2012, a State Bar Investigator sent respondent a letter requesting that he respond in writing, with supporting documentation, to the complaint filed by Rowena Altaha.

55. On June 19, 2012, the investigator sent a copy of the May 11, 2012 letter to respondent via email. Respondent received the email and letter. Respondent did not respond.

CONCLUSIONS OF LAW:

56. By filing the opposition to the MSJ seven days late; failing to notify the court or opposing counsel of his intent to contest the court's tentative ruling on the MSJ; arriving late for the MSJ hearing on October 29, 2012; failing to reschedule either the MSJ or decertification hearing; failing to appear, or make arrangements for the representation of C2PM, at the decertification hearing; failing to ever file the AOB in case no. A131329, thereby causing the appeal to be dismissed; and failing to sign and return a substitution of attorney, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A), Rules of Professional Conduct.

57. By failing to inform the Altahas of the dismissal in case no. A131329; and failing to notify the Altahas that his number was disconnected, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services in violation of Business and Professions Code section 6068(m).

58. By failing to respond to Rowena Altaha's September 2, 2011, September 13, 2011 and September 22, 2011 emails, and September 13, 2011 certified letter, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services in violation of Business and Professions Code section 6068(m).

59. By misrepresenting to the Altahas that he could file an AOB and reverse the dismissal; and misrepresenting to the Altahas that he had drafted an AOB, respondent committed an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

60. By failing to return C2PM's files in response to Rowena Altaha's and Iriki's requests on December 2, 2011, December 15, 2011, December 19, 2011, January 7, 2012, January 9, 2012, January 10, 2012, January 11, 2012, January 12, 2012, and January 24, 2012, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in wilful violation of rule 3-700(D)(1), Rules of Professional Conduct

61. By charging and collecting fees grossly disproportionate to the value of the services performed by respondent, respondent charged and collected an unconscionable fee in wilful violation of rule 4-200(A), Rules of Professional Conduct.

62. By failing to ensure that the Altaha's credit card was only utilized to pay costs on behalf of C2PM, respondent acted with gross negligence, thereby committing an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

63. By failing to ever respond to the letter from the State Bar Investigator, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in violation of Business and Professions Code section 6068(i).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: As a result of respondent's failure to arrange for the Altahas' representation at the CALTRANS decertification hearing, the Altahas' certification in the Disadvantaged Business Enterprise Certification Program was forfeited. Also, as a result of respondent's failure to timely file an Appellant Opening Brief, the Altahas lost their appellate rights. The Altahas have lost business opportunities due to the forfeiture of their certification in the Disadvantaged Business Enterprise Certification Program. Further, the Altahas incurred, and continue to incur, substantial legal fees due to respondent's misconduct. Std. 1.2(b)(iv)

Multiple Acts of Misconduct: Respondent's misconduct involved multiple acts of wrongdoing (nine counts of misconduct). Std. 1.2(b)(ii).

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent practiced law from 2001 until 2011 (10 years) without discipline. However, the present misconduct is deemed serious. See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.

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 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.) 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 nine acts of professional misconduct. Std. 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 std. 2.3, which applies to Respondent's violations of Business and Professions Code section 6106:

Std. 2.3. OFFENSES INVOLVING MORAL TURPITUDE, FRAUD, DISHONESTY OR CONCEALMENT. Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

In *In the Matter of Conner* (Review Dept. 2008) 5 State Bar Ct. Rptr. 93, Conner was found to have committed misconduct in a single client matter over a period of four years. The Review Department

agreed with the Hearing Department's determination that Conner improperly obtained interests adverse to his client, misappropriated \$26,699.556, failed to perform competently, failed to release client files, failed to properly account for entrusted funds, failed to maintain entrusted funds in his trust account and committed multiple acts of moral turpitude, including providing false documents to the State Bar. Several factors in aggravation were found, including, multiple acts of wrongdoing, attempted concealment of misappropriation, lack of candor, significant harm, and indifference toward rectification. Conner, who had over 12-1/2 years of discipline-free practice and cooperated by entering into a fact stipulation, was disbarred.

In *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, the respondent filed an appeal on behalf of a client against the client's wishes, misled the court about the client's wishes, failed to communicate with the client, and failed to return the client file. Although the court found several factors in aggravation, including multiple acts of misconduct, harm, and lack of appreciation and insight into his misconduct, Regan's 17 years of discipline-free practice was given significant weight and Regan was suspended for two years, stayed and 75 days actual.

Here, respondent committed multiple acts of misconduct, including making misrepresentations to his client, over an approximate one year period.

Similar to Conner and Reagan, respondent's misconduct involved a single client matter and respondent has no prior record of discipline. However, respondent's misconduct is far less serious than Conner's. Conner's misconduct spanned four years, included significant misappropriation and involved trust account violations and more aggravating factors than respondent's. Conversely, respondent's misconduct is more egregious than Regan's. Respondent committed more acts of misconduct than Regan, two of which constitute moral turpitude. Additionally, respondent's misconduct caused significant harm to his client. Respondent's lack of a prior record does not warrant the significant mitigation for which Regan was credited.

Protection of the public warrants a level of discipline less than that imposed in *Conner* and higher than that imposed in *Regan*. On balance, a one year actual suspension is consistent with the standards and the purposes of attorney discipline as set for in standard 1.6.

WAIVERS

The parties waive all variances between the facts and conclusions of law asserted in the Notice of Disciplinary Charges and the facts and conclusions of law contained in this stipulation.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 26, 2013.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
12-O-13163	7	4-200(B)(3)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 26, 2013, the prosecution costs in this matter are approximately \$8,047. 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

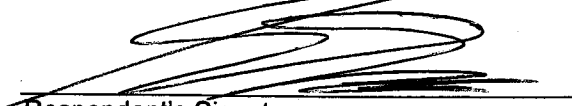
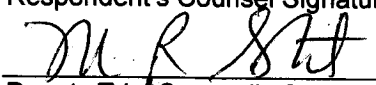
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: GASPAR ROBERTO GARCIA II	Case number(s): 12-O-13163
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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.

<u>2-27-13</u> Date	 Respondent's Signature	<u>Gaspar Roberto Garcia II</u> Print Name
<u>2/27/13</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>n/a</u> Print Name <u>Treva R. Stewart</u> Print Name

(Do not write above this line.)

In the Matter of: GASPAR ROBERTO GARCIA II	Case Number(s): 12-O-13163
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ACTUAL SUSPENSION ORDER

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

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

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

Date

March 19, 2013


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 San Francisco, on March 19, 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 San Francisco, California, addressed as follows:

GASPAR R. GARCIA II
GARCIA AND ASSOCIATES
7 PARK VISTA CIR
SACRAMENTO, CA 95831

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

TREVA STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 19, 2013.



Mazie Yip
Case Administrator
State Bar Court