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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Lee Ann Kern Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 (213) 765-1272</p> <p>Bar # 156623</p>	<p>Case Number(s): 12-O-13461</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">FILED</p> <p style="text-align: center;">MAY 02 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>Richard D. Ackerman 4129 Main Street, Suite B5 Riverside, California 92501 (951) 249-4070</p> <p>Bar # 171900</p>	<p style="font-size: 1.5em;">PUBLIC MATTER</p>	
<p>In the Matter of: RICHARD D. ACKERMAN</p> <p>Bar # 171900</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California; admitted November 23, 1994.
- (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 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)

Stayed Suspension

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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):
 - Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: The three billing cycles immediately following the effective date of the Supreme Court's 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 or a separate attachment entitled "Prior Discipline."
- (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 Attachment to Stipulation, at p. 8.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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

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

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Additional mitigating circumstances

See Attachment to Stipulation, at p. 8.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law 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:

The above-referenced suspension is stayed.

(2) **Probation:**

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

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.

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- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) 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 within one year. **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) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Richard D. Ackerman

CASE NUMBER(S): 12-O-13461

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-13461 (Complainant: Gary Beaudrie)

FACTS:

1. In June 2007, Gary Beaudrie ("Beaudrie") hired Respondent to represent him in a construction defect matter in the Riverside County Superior Court in which Beaudrie was the plaintiff ("the civil matter"). Beaudrie paid Respondent \$7,000 in advanced fees and agreed to pay Respondent a contingency fee of 10% of any recovery in the case.

2. In April 2011, a court trial was held in the civil matter. On October 18, 2011, the court entered judgment against Beaudrie. Thereafter, Beaudrie had 180 days to file and serve a notice of appeal of the judgment in the civil matter.

3. On December 8, 2011, Respondent met with Beaudrie and Beaudrie paid Respondent \$200 in advance fees to appeal the civil matter. On that date, Respondent and Beaudrie went to the courthouse to obtain documents from the civil matter.

4. On December 19, 2011, Respondent informed Beaudrie that Respondent would file the appeal after January 1, 2012.

5. On January 5, 2012, Respondent caused an email to be sent to Respondent's clients, including Beaudrie. In the email, Respondent stated that he had had an acute illness the prior six weeks and that his disabilities affected his practice. Respondent apologized for the delays in the cases and invited his clients to contact him to discuss their respective cases. Respondent did not inform Beaudrie that he was unable to handle the appeal.

6. On January 11, 2012, January 18, 2012, February 5, 2012, and February 24, 2012, Beaudrie sent emails to Respondent in which he asked Respondent to contact Beaudrie to discuss the status of his appeal. Respondent received the emails, but did not communicate with Beaudrie.

7. Respondent had until on or about April 15, 2012 to file and serve a notice of appeal in the civil matter. Respondent failed to appeal the civil matter and the time within which Beaudrie could have done so has expired.

8. On May 21, 2012, Respondent and Beaudrie met briefly to discuss Beaudrie's appeal. On that date, Respondent agreed to meet again with Beaudrie on May 24, 2012, but Respondent later cancelled that appointment. From late May 2012 to the present, Respondent has failed to communicate with Beaudrie about his case.

9. At no time did Respondent advise Beaudrie that the time within which Beaudrie could have appealed the civil matter has expired.

CONCLUSIONS OF LAW:

10. By failing to provide Beaudrie with the status of his appeal and by failing to inform him the time within which Beaudrie could have appealed the civil matter has expired, Respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services and failed to inform his client of significant developments, in willful violation of Business and Professions Code section 6068(m).

11. By failing to timely appeal the civil matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Respondent failed to appeal the civil matter and the time within which Beaudrie could have appealed the matter has expired. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631 [attorney's loss of client's cause of action constituted significant harm].)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline: Respondent has no prior record of discipline in just over 18 years of practice. Although the misconduct in the instant matter is serious, the Supreme Court has nonetheless considered the absence of a prior record of discipline in mitigation. (See *Edwards vs. State Bar* (1990) 52 Cal.3d 28, 31-32, 36, 39, where mitigative credit was given for almost 12 years of discipline-free practice despite intentional misappropriation and commingling.)

Cooperation: Respondent stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible. (*Silva-Vidor v. State Bar* (1989) 49 Cal. 3d 1071, 1079 [mitigative credit given to the attorney for admitting facts and culpability in order to simplify the disciplinary proceedings against her].)

Character References: Nine friends, 21 former and current clients (including four pro bono clients), and a priest wrote letters on behalf of Respondent attesting to his good character. Two of those people, who were clients, were familiar with the extent of Respondent's misconduct. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar. Ct. Rptr. 920, 939 [Mitigating credit given, but reduced where good character witnesses possess inadequate knowledge of misconduct].)

Civic and Pro Bono Activities: Respondent served as past President and Board Member of the Mount San Jacinto College Foundation from 2008-2010; Director at Large for the Riverside County Bar Association in 2010; Mandatory Continuing Legal Education Chair for the Riverside County Bar Association from 2009 to the present; Board of Directors for the Riverside County Bar Association from 2010 to 2011; Board Member and Volunteer for the Public Service Law Corporation from 2006 to the present; and, Judge Pro Tem for the Riverside County Superior Court from 2004 to 2009. In 2009, Respondent received the Wiley W. Manuel Certificate for Pro Bono Services from the State Bar of California. In 2007, Respondent received the John R. Parker Award from the Pacific Justice Institute for his work with civil rights. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 529 [Attorney's participation in civic service and pro bono activities may be evidence of mitigation].)

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 Silvertown* (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 two 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. Standards 2.4(b) and 2.6 are the standards that govern the misconduct in this matter. The most severe sanction prescribed by the applicable standards is standard 2.6, which applies to Respondent's violation of Business and Professions Code section 6068(m) and provides for disbarment or suspension. Since subdivision (m) was not added to Business and Professions Code section 6068 until one year after the effective date of the Standards for Attorney Sanctions, a failure to communicate originally fell under standard 2.4, which applies to offenses involving the willful failure to communicate and perform and provides for a range of reproof or suspension. As such, standard 2.4(b) is the standard applicable to all charges of misconduct in the instant matter. That standard provides for a sanction in the range of reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Respondent's misconduct in the single client matter resulted in harm to the client. Although Respondent's misconduct is aggravated by the harm, it is mitigated by his 18 years of discipline-free practice, his willingness to enter into this stipulation, his civic and pro bono activities, and his limited

good character references. Application of the standards to the facts of this case demonstrates that discipline of one year stayed suspension is the appropriate sanction for Respondent's misconduct.

The recommended disposition is consistent with the range of discipline shown by case law. (*King vs. State Bar* (1990) 52 Cal.3d 307 [Three months actual suspension and four years' stayed suspension imposed when an attorney, in two matters, failed to perform legal services in a competent manner, failed to return client files, and violated his oath and duties]; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [Six months stayed suspension and one year probation imposed when an attorney, in a single client matter, failed to perform legal services with competence which did not result in serious consequences to the client].)

The recommended discipline of one year stayed suspension two years' probation is adequate to protect the public, the courts, and the legal profession.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was March 15, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 15, 2013, the prosecution costs in this matter are \$2,865. 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: Richard D. Ackerman	Case number(s): 12-O-13461
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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.

4/9/2013  Richard D. Ackerman
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name
4/11/13  Lee Ann Kern
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: Richard D. Ackerman	Case Number(s): 12-O-13461
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STAYED 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.)**

5-1-13
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 2, 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:

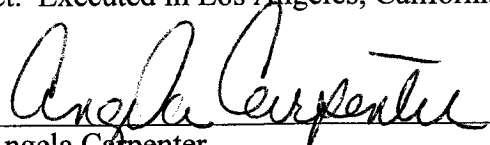
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD D. ACKERMAN
LAW OFFICES OF R.D. ACKERMAN
4129 MAIN STREET
SUITE B5
RIVERSIDE, CA 92501

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

LEE ANN KERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2013.



Angela Carpenter
Case Administrator
State Bar Court