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ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Erin McKeown Joyce Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356</p> <p>Bar # 149946</p>	<p>Case Number(s): 12-O-13466 - RAH 12-O-13947 - RAH 12-O-14331 - RAH 12-O-15872 - RAH</p>	<p>For Court use only</p> <p>FILED P.B. MAY 15 2013</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David Cameron Carr Law Office of David Cameron Carr 530 B Street, Suite 1410 San Diego, CA 92101 Telephone: (619) 696-0526</p> <p>Bar # 124510</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 type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: BRIAN RENE LINNEKENS</p> <p>Bar # 206144</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 8, 1999.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 15 pages, not including the order.

(Effective January 1, 2011)

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4/30/13



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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) 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 (3) 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. See attachment to stipulation re facts, conclusions of law and disposition at page 11.

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- (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 to stipulation re facts, conclusions of law and disposition at page 11.
- (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 to stipulation re facts, conclusions of law and disposition at page 11.
- (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.

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- (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. See attachment to stipulation re facts, conclusions of law and disposition at pages 11-12.
- (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 the attachment to the stipulation re facts, conclusions of law and disposition at page 12.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of three (3) 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 (3) 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 two (2) 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:

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.
- (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:
 - Substance Abuse Conditions
 - Law Office Management Conditions
 - Medical Conditions
 - 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:**

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In the Matter of: BRIAN RENE LINNEKENS	Case Number(s): 12-O-13466, 12-O-13947, 12-O-14331, 12-O-15872
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Mary Rodriguez	\$2,995	January 28, 2011
Karen Webb	\$3,000	January 25, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than one (1) year after the effective date of the Supreme Court Order in these matters.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
- 2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
- 3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Brian Rene Linnekens

CASE NUMBERS: 12-O-13466, 12-O-13947, 12-O-14331 and 12-O-15872

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 Rules of Professional Conduct.

Case No. 12-O-13466 (Complainant: Anthony Carter, Financial Legal Examiner,
State of Washington Department of Financial Services, Division of Consumer Services)

FACTS:

1. Respondent, a California attorney, has never been licensed to practice law in the State of Washington or in any other jurisdiction.
2. Pursuant to Revised Code of Washington (RCW) 2.48.170, only active members of the State Bar of Washington may practice law in that state, except that out of state lawyers may appear *pro hac vice* in Washington State Courts if duly admitted for that purpose. That exception does not apply to any activity of Respondent at issue herein.
3. Between at least March 26, 2010 and March 25, 2011, Respondent performed legal services related to loan modification for no fewer than 46 Washington State residents for properties located in the State of Washington. No attorneys licensed in the State of Washington provided loan modification services to any of the 46 Washington State clients who hired Respondent for loan modification services.
4. Respondent collected advanced attorney fees for providing legal services related to residential mortgage loan modification to no fewer than 46 Washington State clients totaling \$35,085. Respondent has since refunded the advanced fees paid for loan modification services to the 46 Washington State clients.
5. Respondent is no longer operating his loan modification practice which he closed down in April 2011.

CONCLUSIONS OF LAW:

6. By performing legal services related to residential loan modification for no fewer than 46 Washington State clients, Respondent practiced law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction in wilful violation of Rule of Professional Conduct 1-300(B).

Case No. 12-O-13947 (Complainants: Benson and Barbara Hurst)

FACTS:

7. On November 5, 2012, Benson and Barbara Hurst hired Respondent for legal services related to loan modification for their primary residence. The Hursts are residents of Indiana. The Hursts paid Respondent \$3,400 in advanced legal fees for the services related to loan modification work he was hired to perform.

8. Respondent's office did some preliminary work on securing a loan modification for the Hursts. However, Respondent was unable to secure a loan modification on behalf of the Hursts.

9. In February 2012, the Hursts terminated Respondent's employment. After being contacted by the State Bar about the Hursts' complaint, Respondent provided the Hursts with a full refund.

10. The practice of law in Indiana includes making it one's business to act for, and by the warrant of others in legal formalities, negotiations or proceedings. Residential mortgage loan modification services constitute the practice of law in Indiana. Only attorneys licensed to practice law in Indiana can perform loan modification services in Indiana. No attorney employed by Respondent who worked on the Hursts' legal matter was admitted to practice in Indiana.

CONCLUSIONS OF LAW:

11. By performing legal services related to residential mortgage loan modification for the Hursts, Respondent practiced law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction in wilful violation of Rule of Professional Conduct 1-300(B).

Case No. 12-O-14331 (Complainant: Mary Rodriguez)

FACTS:

12. On January 28, 2011, Mary Rodriguez hired Respondent for legal services related to a residential mortgage loan modification. Rodriguez paid Respondent an advanced fee of \$2,995.

13. Respondent was unsuccessful in obtaining a loan modification acceptable to Rodriguez.

CONCLUSIONS OF LAW:

14. By collecting an advanced fee to perform legal services related to mortgage loan modification on behalf of Rodriguez in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

FACTS:

15. On January 25, 2011, Karen Webb hired Respondent for legal services related to a residential mortgage loan modification. Rodriguez paid Respondent an advanced fee of \$3,000.

16. Respondent was unsuccessful in obtaining a loan modification acceptable to Webb.

CONCLUSIONS OF LAW:

17. By collecting an advanced fee to perform legal services related to mortgage loan modification on behalf of Webb in violation of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES

Harm (Std. 1.2(b)(iv)):

Respondent contracted with distressed homeowner clients he represented in loan modifications, and repeatedly collected upfront fees in violation of Civil Code section 2944.7. Some of the clients have been significantly harmed since they still have not received refunds of the advanced fees they should never have been charged in the first place. (See *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233 (failure to repay monies owed to the client was aggravating circumstance); see also, *In the Matter of Harney* (Review Dept. 1995) (failing to disclose potential applicability the statute limiting fees in a medical malpractice case, which led Respondent to collect an excessive fee, was properly considered as harm to the client in aggravation under Standard 1.2(b)(iv))).

Multiple Acts of Misconduct (Std. 1.2(b)(ii)):

Respondent's misconduct in the four matters which comprise this disciplinary stipulation evidence multiple acts of misconduct. Standard 1.2(b)(ii). (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES

Candor/Cooperation (Standard 1.2(e)(v)):

Respondent met with the State Bar Deputy Trial Counsel and Investigator, cooperated in these investigations, admitted his misconduct, and is entering a discipline stipulation fully resolving these matters. Respondent's cooperation has saved the State Bar significant resources and time. Respondent's stipulation to the facts, his culpability, and discipline is a mitigating circumstance. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521.)

Good Character (Std. 1.2(e)(vi)):

Respondent has proffered the favorable testimony of eight witnesses regarding his good moral character. These witnesses represent a wide range of references in the legal and general communities who are

aware of the full extent of the Respondent's misconduct. This constitutes an extraordinary demonstration of good character within the meaning of Standard 1.2(e)(vi), Standards for Attorney Sanctions for Professional Misconduct.

Additional Mitigating Circumstances:

No Prior Discipline:

Respondent has no prior record of discipline. Respondent was admitted in 1999, over eleven years before the onset of the misconduct. Even where the underlying conduct is deemed serious, Respondent's lengthy period of discipline free practice should be afforded mitigating weight. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93 (Review Department gave mitigating credit for over 12 years of discipline free practice despite seriousness of misconduct); *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 (mitigation acknowledged for absence of prior record of discipline in twelve years of practice despite willful misappropriation of over \$29,000); *In re Brown* (1995) 12 Cal.4th 205, citing *Kelly v. State Bar*, (1991) 53 Cal.3d 509, 520 and Standard 1.2(e)(i) (where Supreme Court gave substantial mitigating weight to over 20 years of discipline free practice).)

Restitution:

Prior to entering this stipulation, Respondent provided full refunds to the 46 clients in Washington State and to the Hursts.

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.)

The gravamen of Respondent's misconduct is his repeated violation of Business and Professions Code section 6106.3 – collecting advanced fees for loan modification services. Additionally in the Carter matter (Case No. 12-O-13466) and the Hurst matter (Case No. 12-O-13947), Respondent violated Rule of Professional Conduct 1-300(B), by offering loan modification services to residents of Washington State and Indiana.

Respondent admits to committing multiple 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 severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.10, which applies to Respondent's repeated violations of Business and Professions Code section 6106.3. Under Standard 2.10, which provides the level of discipline range for offenses involving a violation of the Business and Professions Code or Rule of Professional Conduct not specified in any other standard, "[c]ulpability of a member of a violation of an provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

In considering the extent of the misconduct, Respondent's misconduct spanned the nearly the entire time period he operated his loan modification practice from late 2009 (the effective date of Civil Code section 6106.3) until late 2011.

Respondent's misconduct is serious. Respondent has repeatedly violated Business and Professions Code section 6106.3 by accepting advanced fees for loan modification services in violation of Civil Code section 2944.7, and offering loan modification legal services in jurisdictions where he is not admitted in violation of Rule of Professional Conduct 1-300(B).

In considering the degree of harm to the clients, all of the Washington State clients and the Hursts have received refunds. Rodriguez and Webb have not received refunds of the advanced fees collected by Respondent in violation of Business and Profession Code section 6106.3. Thus, the extent of misconduct is great and the harm to the clients has been significant.

The aggravating and mitigating circumstances must also be considered. In aggravation are Respondent's multiple acts and the harm to the clients.

In mitigation, Respondent has fully cooperated with the State Bar to resolve these matters with this stipulation. Further, even though the misconduct here is serious, before all the misconduct considered here began, Respondent had no record of discipline in over eleven years of practice. He has also established his good character through eight character witnesses ready to testify on his behalf.

In a recent Review Department case, *In the Matter of Taylor* (Review Dept. 2012) __ Cal. State Bar Ct. Rptr. __, 2012 WL 5489045 (Cal.Bar Ct.), 2012 Daily Journal D.A.R. 15,482, November 9, 2012, the respondent attorney was found culpable of violating California Civil Code Section 2944.7 and collecting illegal fees in eight client matters. The Review Department recommended that the respondent be suspended for six months. In *Taylor*, the respondent attorney had not paid full refunds to any of the clients. He was found to have engaged in multiple acts of misconduct, causing significant harm to his clients and displaying indifference toward rectification or atonement for his misconduct.

In these matters, Respondent spontaneously closed down his loan modification practice in late 2011, when the full implication of California Civil Code Section 2944.7 was clear to him.

Following Standard 2.10 and considering the totality of the misconduct considered in these matters, particularly in light of the extent of the misconduct and degree of harm to the clients, and considering the aggravating and mitigating circumstances, the appropriate level of discipline is two (2) years actual suspension for all of Respondent's misconduct in these matters. This sanction will be sufficient to protect the public, the courts and the legal profession under Standard 1.3, and falls squarely within the Standards for discipline in these matters.

PENDING PROCEEDINGS

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

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 26, 2013, the prosecution costs in this matter are \$10,455. 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

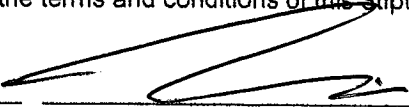

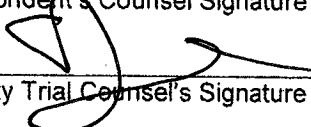
Pursuant to Rule of Procedure 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School.

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In the Matter of: BRIAN RENE LINNEKENS	Case number(s): 12-O-13466, 12-O-13947, 12-O-14331, 12-O-15872
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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>4-30-13</u> Date	 Respondent's Signature	<u>Brian R. Linnekens</u> Print Name
<u>4/29/13</u> Date	 Respondent's Counsel Signature	<u>David Cameron Carr</u> Print Name
<u>5-1-13</u> Date	 Deputy Trial Counsel's Signature	<u>Erin McKeown Joyce</u> Print Name

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In the Matter of: BRIAN RENE LINNEKENS	Case Number(s): 12-O-13466, 12-O-13947, 12-O-14331, 12-O-15872
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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.

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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.)**

05-13-2013
Date


RICHARD A. PLATEL
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 15, 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:

**BRIAN R. LINNEKENS
9854 NATIONAL BLVD #242
LOS ANGELES, CA 90034**

**DAVID C. CARR
LAW OFFICE OF DAVID CAMERON CARR
530 B ST STE 1410
SAN DIEGO, CA 92101**

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

Erin M. Joyce, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 15, 2013.



Paul Barona
Case Administrator
State Bar Court