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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Ross Eden Viselman Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 (213) 765-1295 Bar # 204979	Case Number(s): 12-O-13612-DFM	For Court use only PUBLIC MATTER FILED MAY 09 2013 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Norberto Fidel Reyes III 3460 Wilshire Boulevard Suite 1005 Los Angeles, California 90010 Bar # 158569	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Norberto Fidel Reyes III Bar # 158569 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 June 9, 1992.
- (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)

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) 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 97-O-13344, 01-O-0098
 - (b) Date prior discipline effective October 23, 2004
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 4-100(A). In this matter, Respondent failed to maintain client funds in his client trust account and improperly commingled his personal funds with client funds his client trust account
 - (d) Degree of prior discipline One year stayed suspension and two years probation.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

Effective January 3, 1996 (case no. 95-O-11099), Respondent was privately reprovved as a result of violating Business and Professions Code section 6068(m). In this matter, Respondent failed to communicate a settlement offer to a client.
- (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.

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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.
- (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.

Additional mitigating circumstances:

See attachment, page 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be 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)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 90 days.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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

- (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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: NORBERTO FIDEL REYES III

CASE NUMBERS: 12-O-13612

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes.

Case No. 12-O-13612 (Complainant: De Los Santos)

FACTS:

1. On May 4, 2010, Albert and Victoria De Los Santos (the "De Los Santos") employed Respondent to file a lawsuit against their mortgage lender.
2. On March 25, 2011, Respondent filed a civil action in Los Angeles County Superior Court entitled *Albert De Los Santos and Victoria De Los Santos et al. v. JP Morgan Chase Bank, N.A., et al.* (the "Civil Action").
3. On August 18, 2011, JP Morgan Chase Bank, N.A., the defendant in the Civil Action, filed a demurrer.
4. On August 25, 2011, Respondent filed and served a request for dismissal of the Civil Action without the knowledge, consent or authorization of the De Los Santos. That day, the court dismissed the Civil Action without prejudice.
5. On November 15, 2011, Respondent informed the De Los Santos that the Civil Action had been dismissed, and that he would re-draft the complaint.
6. Between November 15, 2011 and January 27, 2012, the De Los Santos requested status updates from Respondent, and in particular, inquired about whether the new complaint had been filed.
7. At some point during this time period, Respondent determined to forgo filing the new complaint because, in his judgment, there was insufficient evidence to justify the filing of a complaint, and such a lawsuit would be without merit.
8. On January 27, 2012, an associate working in Respondent's law firm sent an email to the De Los Santos informing them for the first time that a lawsuit on their behalf was not forthcoming and that the De Los Santos were "no longer in litigation."
9. Between January 27, 2012 and April 24, 2012, the De Los Santos requested information, via email, from Respondent, and in particular, inquired about why a lawsuit had not been filed on their behalf.

10. Despite these inquiries from the De Los Santos, Respondent failed to explain to them the basis for his decision to forgo filing and prosecuting a new complaint.

11. On April 24, 2012, the De Los Santos terminated their employment of Respondent by letter and submitted a complaint to the State Bar of California.

12. On April 12, 2013, Respondent initiated fee arbitration with the De Los Santos to resolve the dispute between Respondent and the De Los Santos.

CONCLUSIONS OF LAW:

13. By failing to explain to the De Los Santos why he chose to forgo filing and prosecuting a complaint, even though the fee agreement called for litigation on behalf of the De Los Santos, Respondent wilfully violated Business and Professions Code, section 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has a record of two prior impositions of discipline, as follows:

1. Effective October 23, 2004 (case nos. 97-O-13344 and 01-O-00098), the Supreme Court of California ordered that Respondent be suspended for one-year, stayed the execution of the suspension, and placed him on probation for two years with no actual suspension. The charges involved violations of Rules of Professional Conduct, rule 4-100(A). Respondent failed to maintain client funds in his client trust account, and improperly commingled his funds in his client trust account.

2. Effective January 3, 1996 (case no. 95-O-11099), Respondent was privately reprovved as a result of violating Business and Professions Code section 6068(m). In this matter, Respondent failed to communicate a settlement offer to a client.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Candor/Cooperation: Respondent cooperated by entering into this Stipulation to resolve this matter before trial. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr 41, 50.)

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.)

The sanction applicable to Respondent’s violation of Business and Professions code, section 6068(m) is found in standard 2.6. Standard 2.6 provides that the culpability of a member of a violation of section 6068(m) “shall result in disbarment or suspension depending on 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 general, standard 1.7(b) calls for disbarment where a Respondent has a record of two prior impositions of discipline, as in this case. However, “[m]erely declaring that an attorney has [two prior] impositions of discipline, without more analysis, may not adequately justify disbarment in every case.” (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar. Ct. Rptr. 131, 136.) Instead, it is necessary to “examine the nature and chronology of respondent’s record of discipline.” (*Id.* (citation omitted.))

Respondent’s progressive discipline includes: a private reproof in 1996 for misconduct in one matter involving Respondent’s failure to communicate a settlement offer to a client; and one year of stayed suspension in 2004 for misconduct (committed in 2000) in two matters involving client trust account violations, but not involving any misappropriation of client funds. Respondent’s current violation is similar to the misconduct that gave rise to the private reproof in 1996, but occurred over 15 years later, and the intervening discipline in 2004 involved an entirely different kind of misconduct than at issue here. So, there is no common thread between all three disciplinary matters. Further, none of the violations involved dishonesty or moral turpitude.

Here, Respondent’s misconduct took place over a short period of time, and there is no evidence that Respondent abandoned his clients, though he did fail to communicate to them his determination that the contemplated lawsuit lacked merit and would be unsuccessful. There is no indication, however, that the lack of communication harmed the clients or the administration of justice in a significant way.

Given the nature of the current misconduct and the lack of significant harm caused to the clients, disbarment, pursuant to standard 1.7(b), would be manifestly unjust. Because Respondent has two prior impositions of discipline, however, a 90-day actual suspension from the practice of law, as stipulated herein, is appropriate to protect the public and otherwise serves the purposes of attorney discipline.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was April 11, 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-13612	1	3-110(A)
12-O-13612	2	3-700(D)(2)
12-O-13612	3	4-100
12-O-13612	4	3-700

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 4, 2013, the prosecution costs in this matter are \$5,182.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT.

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of:
Norberto Fidel Reyes III

Case number(s):
12-O-13612-DFM

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.

April 12, 2013
Date


Respondent's Signature

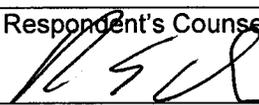
Norberto Fidel Reyes III
Print Name

Date

Respondent's Counsel Signature

Print Name

April 12, 2013
Date


Deputy Trial Counsel's Signature

Ross Eden Viselman
Print Name

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In the Matter of: Norberto Fidel Reyes III	Case Number(s): 12-O-13612-DFM
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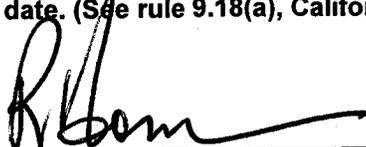
ACTUAL SUSPENSION ORDER

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 5/6/13


RICHARD A. HONN
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 <select city>, on May 9, 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:

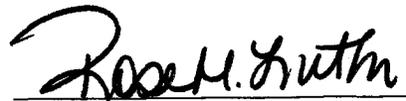
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

NORBERTO F. REYES III
REYES LAW GROUP, APLC
3460 WILSHIRE BLVD STE 1005
LOS ANGELES, CA 90010

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

ROSS VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 9, 2013.



Rose M. Luthi
Case Administrator
State Bar Court