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State Bar Court of California  
Hearing Department  
Los Angeles  
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Kim Kasreliovich Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA (213) 765-1378</p> <p>Bar # 261766</p>	<p>Case Number(s): 12-O-17225 - RAP 12-O-17454</p>	<p>For Court use only</p> <p><b>FILED</b></p> <p>NOV 22 2013 </p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p><b>PUBLIC MATTER</b></p>
<p>In Pro Per Respondent</p> <p>Michael Patrick Caruso 875 Rosecrans St San Diego, CA 92106 (951) 347-8449</p> <p>Bar # 248821</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: MICHAEL PATRICK CARUSO</p> <p>Bar # 248821</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 May 18, 2007.
- (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 12 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."



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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: three billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below 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.
- (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. For a further discussion of Multiple Acts, see the stipulation at page 9.
- (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. For a further discussion of Emotional/Physical Difficulties, see the stipulation at page 9.
- (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.

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(13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

## 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 checked="" 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:**

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### Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of 2 times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:



11. On February 20, 2013, Respondent refunded \$5,490 to the Vasquezes after becoming aware of their request for a refund.

#### CONCLUSIONS OF LAW:

12. By filing the civil complaint with a check that was returned for insufficient funds, by failing to remit the necessary filing fee after notification by the court thereby causing the filing to be cancelled and by failing to take any subsequent action to properly re-file the complaint, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

13. By failing to refund the advanced fee paid by the Vasquezes for approximately five months, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

14. By failing to return the filings fees paid by the Vasquezez for approximately five months, Respondent failed to promptly pay or deliver, as requested by the client, any funds in the possession of the member which the client is entitled to receive in willful violation of the Rules of Professional Conduct, rule 4-100(B)(4).

15. By failing to place the Vasquezes' filing fee in a trust account, Respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of the Rules of Professional Conduct, rule 4-100(A).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** The misconduct acknowledged by Respondent evidences multiple acts of wrongdoing. Here, Respondent admits to committing four acts of misconduct.

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**Emotional/Physical Difficulties (Std. 1.2(e)(iv)):** From approximately January 2012 through July 2012, Respondent suffered from a serious medical condition that profoundly impacted his ability to run his law practice and to function in daily life. Respondent's medical deterioration occurred simultaneous to the events in the Vasquez case. Respondent's condition led to his inattention to his office and clients and caused the instant misconduct. Since August 2012 Respondent has been regularly treated for his medical condition and his doctors indicate that Respondent has made steady and strong improvements. In several cases the court has afforded mitigation for mental health and medical conditions in the absence of complete rehabilitation finding that steady progress towards rehabilitation has been shown. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 289; *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561.)

#### 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 four 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.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.2(b), which applies to Respondent’s violations of the Rules of Professional Conduct, rule 4-100.

Standard 2.2(b) provides that culpability of a member of a violation of rule 4-100 of the Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month suspension from the practice of law, irrespective of mitigation. In the instant matter, Respondent failed to maintain funds in a trust account and failed to promptly deliver funds belonging to the client which makes this standard applicable.

While Standard 2.2(b) calls for a three-month actual suspension irrespective of mitigation, under the current circumstances, there is compelling justification and reason to deviate from the standard and impose lesser discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92; also see *Sternlieb v. State Bar* (1990) 52 Cal. 3d 317 [30 days actual suspension for trust account violations].) Standard 1.6(b)(ii) states that “a lesser degree of sanction...shall be imposed or recommended” if mitigating circumstances are present and the purposes of imposing attorney discipline will still be properly fulfilled in light of the balance between aggravating and mitigating circumstances. The funds at issue in this case are \$395, in a single client matter, which Respondent’s employee deposited into the general account. It is Respondent’s usual practice to have clients write checks for filing fees directly to the court because Respondent does not maintain a client trust account. In his absence, this practice was not followed by staff. As discussed above, Respondent was battling a serious medical condition at this time and failed to notice the error. When Respondent regained his health several months later, he refunded the Vasquezes their attorney fees and filing fees. Technically, Respondent did fail to place the filing fees in trust as required by the Rules of Professional Conduct. However, the harm was minimal to the clients, Respondent’s mitigation is significant and he made full restitution. Given these factors and the purposes of attorney discipline, a one year stayed suspension with two years of probation reporting to ensure that Respondent stays on the path to wellness is sufficient.

Case law supports a deviation under these circumstances. In *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, the Review Department declined a strict interpretation of the applicable standard despite Lawrence’s multiple prior disciplines and current violations of the Rules of Professional Conduct, rule 4-100 (two counts), Business and Professions Code, section 6106 and probation conditions. Lawrence suffered from a physical condition that caused extreme facial pain but

which he had managed to control for over a year at the time of trial. The court stated that “Although Lawrence’s extreme physical disabilities do not immunize him from discipline, they do establish the most compelling mitigating circumstances and justify deviating from the standard. Based on the limited nature and extent of his misconduct, a disbarment recommendation would be excessive and punitive.” (*Id.* at 241.) Like Lawrence, Respondent’s misconduct is limited and given the compelling mitigation Respondent has presented, a deviation from the standard still serves the purposes of attorney discipline.

## **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-17225	ONE	1-300(A)
12-O-17225	TWO	3-700(D)(2)
12-O-17225	THREE	4-100(B)(3)
12-O-17225	FOUR	1-320(A)
12-O-17454	SIX	1-300(A)

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 21, 2013, the prosecution costs in this matter are \$3,419. 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**

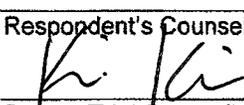
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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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>10/30/2013</u> Date	<u></u> Respondent's Signature	<u>Michael P. Caruso</u> Print Name
<u>11/4/13</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Kim Kasreliovich</u> Print Name

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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:

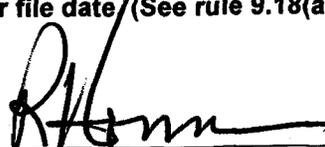
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 8, paragraph 5, delete "March 26, 2013," and in its place is inserted "March 26, 2012."
2. On page 8, paragraph 6, add before the last sentence: "Respondent received this notice."
3. On page 11, under Exclusion From MCLE Credit, insert "or the MPRE" after "School."
4. On page 9, paragraph 14, delete "Vasquez," and in its place is inserted "Vasquezes."

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

11/21/13

  
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 Los Angeles, on November 22, 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:

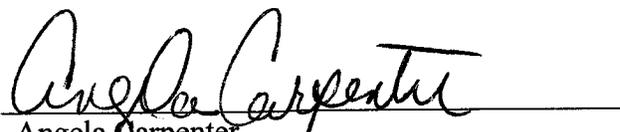
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL P. CARUSO  
THE CARUSO LAW FIRM  
875 ROSECRANS ST  
SAN DIEGO, CA 92106

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

KIM KASRELIOVICH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 22, 2013.

  
Angela Carpenter  
Case Administrator  
State Bar Court