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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Christine Souhrada Senior Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 Tel: (415) 538-2183  Bar # 228256	<b>Case Number(s):</b> 12-O-17874 - PEM 12-H-18229 - PEM	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> ✓  <b>JUN 20 2013</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>In Pro Per Respondent</b>  Gerald William Filice Filice Law Offices 1337 Howe Avenue, Ste. 250 Sacramento, CA 95825 Tel: (530) 303-5033  Bar # 99657	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>	
<b>In the Matter of:</b> <b>GERALD WILLIAM FILICE</b>  Bar # 99657  A Member of the State Bar of California (Respondent)	<b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**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 1, 1981.
- (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.



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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: two 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 10-O-10073
  - (b) ☐ Date prior discipline effective November 9, 2011
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 4-100(A) [commingling] See attachment at page 12.
  - (d) ☐ Degree of prior discipline public reproof
  - (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.

- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See attachment at page 13
- (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 at page 13
- (8) ☐ **No aggravating circumstances are involved.**

**Additional aggravating circumstances:**

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

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

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of two years.

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

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

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of 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 60 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:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

#### F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

☐ No MPRE recommended. Reason:

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

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In the Matter of: GERALD WILLIAM FILICE	Case Number(s): 12-O-17874; 12-H-18229
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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

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### 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:
- a. 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:                      GERALD WILLIAM FILICE

CASE NUMBERS:                      12-O-17874; 12-H-18229

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 12-O-17874 (Complainant: Charles Enea)

**FACTS:**

1. On July 26, 2011, Respondent entered into an "Attorney-Client Partial Contingency Fee Agreement" ("fee agreement") with Charles Enea, John Enea, and Veterans' Benefit Group, Inc. ("the Eneas") to represent them in a defamation action against Mother Jones News, Channel 7 ABC, Willard Smith, Katheryn A. Stebner, and possibly others ("defamation action").
2. In the fee agreement, Respondent agreed to file a court action and represent the Eneas until settlement or judgment. The fee agreement also required a minimum fee of \$15,000; \$5,000 of which was to be paid at the time the fee agreement was signed and returned to Respondent.
3. On July 27, 2011, Charles Enea paid Respondent \$5,000 for his representation in the defamation action.
4. At the time the Eneas engaged Respondent and entered into the fee agreement, it was reasonably foreseeable that the total amount of time for Respondent's legal representation of the Eneas would exceed four hours.
5. The fee agreement did not inform the Eneas that Respondent did not have professional liability insurance. Respondent did not otherwise inform the Eneas in writing, at the time of their engagement of Respondent, that Respondent did not have professional liability insurance.
6. At the time the Eneas engaged Respondent and entered into the fee agreement, Respondent knew or should have known that he did not have professional liability insurance.
7. On October 5, 2012, Charles Enea filed a complaint against Respondent with the State Bar ("Enea complaint").
8. On December 5, 2012, the State Bar opened an investigation on the Enea complaint.
9. On January 8, 2013, and on February 13, 2013, a State Bar investigator sent letters to Respondent regarding the Enea complaint. The letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in this matter, and provide specified information and documentation. Respondent received the letters, but failed to respond to the

allegations, provide any of the specified information and documentation requested, or otherwise cooperate in the State Bar investigation.

10. At no time did Respondent provide a response to the allegations of misconduct in the Enea complaint or otherwise cooperate with the State Bar investigation.

#### CONCLUSIONS OF LAW:

11. By failing to inform the Eneas in writing, at the time of the engagement, that Respondent did not have professional liability insurance, where it was reasonably foreseeable that the total amount of Respondent's legal representation of the client would exceed four hours, Respondent willfully violated Rules of Professional Conduct, rule 3-410.

12. By failing to provide a written response to the allegations regarding Respondent's conduct in the Enea complaint or otherwise failing to cooperate in the State Bar investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in wilful violation of Business and Professions Code, section 6068(i).

#### Case No. 12-H-18229 (State Bar Investigation)

#### FACTS:

13. On October 13, 2011, Respondent signed a stipulation in State Bar Case Number 10-O-10073 et al., in which he stipulated to misconduct and agreed to receive a public reproof and to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that Respondent signed.

14. On October 19, 2011, the State Bar Court issued an order imposing a public reproof upon respondent in case number 10-O-10073. The State Bar Court order required Respondent to comply with the stipulated conditions attached to the reproof.

15. On October 19, 2011, the stipulation and order were filed with the State Bar Court. On that same date, Respondent was served with the order and received it.

16. Shortly after October 19, 2011 Respondent had actual knowledge of the reproof conditions and reproof order.

17. The reproof order and reproof conditions became effective on November 3, 2011.

#### 18. QUARTERLY REPORTING CONDITION

One of the conditions of the reproof required respondent to submit reports as follows:

"Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 the proceeding. If the first report

would cover less than thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period."

19. Respondent violated this condition by failing to submit the quarterly reports due no later than July 10, 2012, October 10, 2012 and November 9, 2012. To date, Respondent has not submitted these reports.

#### 20. ETHICS SCHOOL CONDITION

One of the reprobation conditions provided as follows:

"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 the session."

21. Respondent violated this condition by failing to provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School by the November 9, 2012 deadline. To date, Respondent has not complied with this condition.

#### 22. MPRE CONDITION

One of the reprobation conditions provided as follows:

"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 of the effective date of the reprobation."

23. Respondent violated this condition by failing to provide proof of passage of the MPRE to the Office of Probation by the November 9, 2012 deadline. To date, Respondent has not complied with this condition.

#### 24. CLIENT FUNDS CERTIFICATE CONDITION

One of the reprobation conditions provided as follows:

"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."

25. Respondent violated this condition by failing to submit client funds quarterly reports with a certificate from a certified public accountant or other financial professional due July 10, 2012, October 10, 2012, and November 9, 2012. To date, Respondent has not submitted these reports.

## 26. CLIENT TRUST ACCOUNTING SCHOOL CONDITION

One of the reprobation conditions provided as follows:

“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.”

27. Respondent violated this condition by failing to supply to the Office of Probation satisfactory proof of attendance at a session of the Client Trust Accounting School by the November 9, 2012 deadline. To date, Respondent has not complied with this condition.

## 28. CONTACTING THE OFFICE OF PROBATION TO SCHEDULE MEETING CONDITION:

One of the reprobation conditions provided as follows:

“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.”

29. Respondent violated this condition of his reprobation by failing to timely contact the Office of Probation and schedule a meeting with his assigned probation deputy within thirty (30) days from the effective date of discipline. Respondent completed this meeting 30 days late.

## CONCLUSIONS OF LAW:

30. By not contacting the Office of Probation to schedule a meeting with his assigned probation deputy within thirty (30) days from the effective date of discipline; by not submitting the quarterly reports due no later than July 10, 2012, October 10, 2012 and November 9, 2012; by not providing satisfactory proof of attendance to Ethics School and Client Trust Accounting School by the November 9, 2012 deadline; by not providing proof of passage of the MPRE to the Office of Probation by November 9, 2012; and by not submitting client funds quarterly reports with a certificate from a certified public accountant or other financial professional by the July 10, 2012, October 10, 2012, and November 9, 2012 deadlines, Respondent failed to comply with all conditions attached to any disciplinary probation administered by the State Bar in willful violation of Rules of Professional Conduct, rule 1-110.

## ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.2(b)(i)):** Respondent has a prior disciplinary matter, specifically, case no. 10-O-10073, effective November 9, 2011, the matter which resulted in the public reprobation underlying case number 12-H-18229, one of the present matters. In that case Respondent admitted to culpability for commingling. Specifically, between August 2010 and May 2011, Respondent failed to withdraw his personal funds from his trust account, used his trust account for personal purposes, made

payments from his trust account for his personal expenses unrelated to client matters, and repeatedly deposited his personal funds into the trust account.

**Multiple Acts of Misconduct (Std. 1.2(b)(ii)):** Respondent committed multiple acts of misconduct in that he failed to comply with six of the conditions of his reproof in case no. 12-H-18229.

**Indifference (Std. 1.2(b)(v)):** Respondent has demonstrated indifference towards rectification of his misconduct in that he has not come into compliance with any of the outstanding conditions of his reproof in case no. 12-H-18229.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing multiple acts of professional misconduct including failing to comply with six conditions of his reproof. 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 2.6, which applies to Respondent's violation of Business and Professions Code, section 6068(i).

Standard 2.6 provides that a violation of Business and Professions Code, section 6068 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.

Since Respondent has a prior record of discipline, standard 1.7(a) is also applicable and states: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the

current proceeding would be manifestly unjust.” Thus, since Respondent’s prior imposition of discipline was a public reproof, the discipline imposed in the present matter must be greater.

Despite the filing of disciplinary charges against him, Respondent still has not come into compliance with the outstanding conditions of his reproof. Further, Respondent violated a significant proportion of his reproof conditions. In fact, he violated more conditions than he complied with. Respondent’s failure to satisfy most of his reproof conditions and his failure to come into compliance even after the filing of disciplinary charges indicates that Respondent lacks understanding of the gravity of his earlier misdeeds and the import of the State Bar’s regulatory functions. Respondent’s failure to cooperate in the investigation further indicates that he fails to appreciate the seriousness of the charges in the instant proceeding or to comprehend the importance of participating in the disciplinary proceedings, which are important factors to consider in determining the level of discipline.

Given Respondent’s multiple violations and his lack of efforts to remedy those violations, actual suspension is necessary to fulfill the purposes of discipline. Application of the standards to the facts of this case demonstrates that discipline of 60 days actual suspension is the appropriate sanction for Respondent’s misconduct.

The stipulated level of discipline is also consistent with case law involving similar misconduct. In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the attorney violated the conditions of his reproof and then defaulted in the disciplinary proceeding. The Court imposed a one year stayed suspension with 60 days actual suspension, finding that the attorney’s non-compliance with one of his reproof conditions and failure to participate in the disciplinary proceedings evidenced a contemptuous attitude toward the disciplinary proceedings and failure to acknowledge the wrongfulness of his acts. (*Id.* at 805-806). In this matter, these same aggravating concerns are present, in that Respondent’s failure to comply with most of his reproof conditions and failure to cooperate in a State Bar investigation evidence a lack of appreciation for the seriousness of these disciplinary proceedings. Thus, the level of discipline imposed upon Respondent here is properly similar to that imposed in *Conroy*. The recommended discipline of two years stayed, and two years probation, to include 60 days actual suspension, is adequate to protect the public, the courts, and the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 17, 2013, the prosecution costs in this matter are \$7,651. 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 State Bar Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)


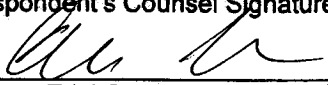
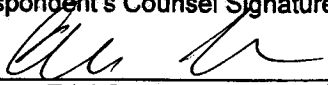
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In the Matter of:  
GERALD WILLIAM FILICE

Case number(s):  
12-O-17874; 12-H-18229

### 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>6-3-13</u> Date	 Respondent's Signature	<u>Gerald William Filice</u> Print Name
<u>6/6/13</u> Date	 Respondent's Counsel Signature	<u>Christine Souhrada</u> Print Name
<u>6/6/13</u> Date	 Deputy Trial Counsel's Signature	<u>Christine Souhrada</u> Print Name

(Do not write above this line.)

In the Matter of: GERALD WILLIAM FILICE	Case Number(s): 12-O-17874; 12-H-18229
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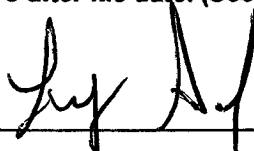
### ACTUAL SUSPENSION ORDER

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.)**

June 20, 2013  
Date

  
Judge of the State Bar Court

**LUCY ARMENDARIZ**



## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 20, 2013, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

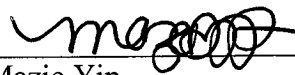
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GERALD WILLIAM FILICE  
FILICE LAW OFFICES  
1337 HOWE AVE STE 250  
SACRAMENTO, CA 95825

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

CHRISTINE A. SOUHRADA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 20, 2013.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court