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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Hugh G. Radigan Deputy Trial Counsel 845 South Figueroa Street Los Angeles, California 90017-2515 213-765-1206 Bar # 94251	Case Number(s): 12-O-18036-DFM 12-O-18054 13-O-11703 14-O-00483	For Court use only FILED FEB 11 2016 <i>JRK</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Joel Samuel Farkas 12711 Ventura Blvd., Suite 495 Studio City, California 91604 818-751-5101 Bar # 244032	PUBLIC MATTER	
In the Matter of: JOEL SAMUEL FARKAS Bar # 244032 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 **September 11, 2006**.
- (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 **17** 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):
- 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: **Costs to be paid in equal amounts prior to February 1 for the two billing cycles following the effective date of the Supreme Court discipline 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. See page 13 of the attachment.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 14 of the attachment.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution. See page 14 of the attachment.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the

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product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (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 extraordinarily 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 page 14 of the attachment.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 (2) 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 **six (6) months**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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.

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(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: JOEL SAMUEL FARKAS	Case Number(s): 12-O-18036-DFM 12-O-18054 13-O-11703 14-O-00483
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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
Derek Plonka	\$5,500	January 5, 2012
Astrid Conte-Williams	\$3,400	July 2, 2010
Maha Osmani	\$1,631.25	May 14, 2013

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **two years from the effective date of the discipline order**.

b. Installment Restitution Payments

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

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

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

c. Client Funds Certificate

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

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

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

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOEL SAMUEL FARKAS

CASE NUMBERS: 12-O-18036, 12-O-18054, 13-O-11703 and
 14-O-00483 DFM

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-18036 (Complainant: Astrid Conte-Williams)

FACTS:

1. Astrid Conte-Williams, (Williams), employed Respondent on July 2, 2010. The scope of services described embraced financial matters associated with Williams' divorce and the impact of that upon the client's continuing spousal support award. Williams paid Respondent a total of \$20,250 towards attorney's fees and costs.
2. Williams originally consulted with Respondent to pursue a loan modification. Respondent was paid \$3,400 for loan modification services prior to completion of all steps of the application process, in violation of Civil Code section 2944.7.
3. Unhappy with Respondent's performance in the family law matter, Williams terminated Respondent and demanded an accounting and return of her file by letter dated January 2, 2013. An identical demand letter was sent to Respondent on March 16, 2013, by certified mail. Respondent received the January 2, 2013 letter.
4. Prior to March 16, 2013, Respondent returned nine of ten boxes of Williams' file materials but failed to provide an accounting. Williams subsequently complained to the State Bar.
5. On January 28, 2013, a State Bar investigator mailed a letter to Respondent requesting that Respondent provide a written response to the allegations raised by Williams's complaint.
6. On February 7, 2013, a State Bar investigator mailed a letter to Respondent requesting that Respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation.
7. To date, Respondent has not responded to the allegations under investigation as requested by the State Bar investigator.

CONCLUSIONS OF LAW:

8. By agreeing to attempt to negotiate a home mortgage loan modification for a fee for his client, and charging and receiving \$3,400 from the client before Respondent had fully performed each and every service Respondent contracted to perform, Respondent violated Civil Code, section 2944.7, in willful violation of Business and Professions Code, section 6106.3.

9. By failing to release promptly, after termination of Respondent's employment on January 2, 2013, all of the client's papers and property following the client's request for the client's file, Respondent willfully violated the Rules of Professional Conduct, rule 3-700(D)(1).

10. By failing to render an appropriate accounting to the client regarding advanced fees and costs following the client's request for such accounting on January 2, 2013, Respondent willfully violated the Rules of Professional Conduct, rule 4-100(B)(3).

11. By failing to provide a substantive response to the State Bar's letters of January 28, 2013 and February 7, 2013, that requested Respondent's response to the allegations of misconduct being investigated in case no. 12-O-18036, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 12-O-18054 (Complainant: Derek Plonka)

FACTS:

12. Derek Plonka ("Plonka"), retained Respondent on November 18, 2010, to negotiate with Plonka's divorce attorney, Wendy Herzog, concerning issues of her performance and fees, and to explore and pursue a malpractice claim against her if negotiated resolution could not be achieved. Plonka had previously hired Ms. Herzog to represent him in a divorce action.

13. The retainer Plonka executed with Respondent provided for a \$2,500 advanced fee upon executing the agreement and an additional \$2,500 prior to initiating a malpractice filing. The remainder of Respondent's services would be compensated via a contingency fee arrangement. Plonka paid Respondent a total of \$5,500 for these services, \$3,000 on November 19, 2010, and \$2,500 on January 5, 2012.

14. Respondent failed to negotiate the dispute with Herzog prior to filing the malpractice complaint on January 4, 2012. Respondent incorrectly construed the applicable statute of limitations as expiring on January 6, 2012. The statute of limitations had actually expired on May 12, 2011, one year subsequent to Herzog filing a substitution of counsel relieving her as attorney of record in Plonka's divorce action.

15. Defense counsel for Herzog filed a demurrer and motion to strike on March 6, 2012, premised entirely on the statute of limitations. Respondent failed to file any opposition and failed to appear at the hearing conducted May 14, 2012. As a result, the demurrer was sustained without leave to amend on May 14, 2012. Respondent did not notify Plonka he neither opposed the demurrer nor appeared.

16. Subsequent to the hearing, on May 14, 2012, Respondent notified Plonka:

“Oh sorry I didn’t call earlier.. We’re amending the complaint as we discussed... Other than that, uneventful... Wendy’s attorney didn’t even show up...jsf”

17. Respondent filed a motion to reconsider on May 31, 2012, asserting that the applicable statute of limitations expired January 6, 2012 and that the complaint was timely filed. The hearing date set by Respondent on the reconsideration motion was August 21, 2012. In the interim, the court filed notice of entry of judgment on July 12, 2012.

18. On August 21, 2012, both Respondent and Plonka appeared for the reconsideration argument at which time the court ruled that by virtue of the entry of judgment the court was without jurisdiction to rule on the matter and on that basis denied the requested relief.

19. Subsequent to the hearing Plonka overheard Respondent tell opposing counsel he intended to file an appeal. No appeal was filed, timely or otherwise.

20. Plonka went to Herzog’s residence on the evening of September 6, 2012, to ostensibly discuss resolution of their dispute. Herzog felt threatened and instructed her counsel to advise Respondent to instruct his client to cease such behavior at risk of a restraining order.

21. Armed with this information, Respondent explained to Plonka that it was his behavior that was compromising his ability to negotiate resolution of the dispute when in truth, no discussions were ever pursued. Herzog and her counsel had no incentive to discuss a complaint dismissed with prejudice where no appeal rights had been preserved and the matter concluded.

CONCLUSIONS OF LAW:

22. By failing to negotiate the dispute with Ms. Herzog prior to filing a malpractice complaint, by failing to correctly calculate the Statute of Limitations prior to filing the complaint, by failing to oppose and appear at a demurrer hearing on May 14, 2012, by failing to appeal the demurrer ruling by filing a timely notice of appeal by September 6, 2012, and by failing to notify Plonka that he neither opposed nor appeared at the May 14, 2012 hearing, Respondent intentionally, recklessly or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

23. By performing no services of value on behalf of Plonka, Respondent earned none of the advanced fees paid and Respondent failed to refund promptly, upon Respondent’s termination of employment on September 25, 2012, any part of the \$5,500 fee, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

24. By misrepresenting to Plonka that Respondent continued to negotiate with Herzog’s counsel in an effort to favorably resolve Plonka’s malpractice claim, when Respondent knew the statements were false, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

25. By misrepresenting to Plonka on May 14, 2012, that he had appeared at the demurrer hearing and that opposing counsel failed to appear in Los Angeles Superior Court Case No. SC115456, styled *Plonka v. Herzog*, Respondent knew or was grossly negligent in not knowing the statements were

false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Case No. 13-O-11703 (Complainant: Astrid Conte-Williams)

FACTS:

26. Astrid Conte-Williams, (Williams), filed a complaint with the State Bar on November 26, 2012.

27. On April 4, 2013, a State Bar investigator mailed a letter to Respondent requesting that Respondent provide a written response to the allegations raised by William's complaint.

28. On April 24, 2013, a State Bar investigator mailed a letter to Respondent requesting that Respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation.

29. Respondent failed to timely provide a written response to the allegations as requested.

CONCLUSIONS OF LAW:

30. By failing to provide a substantive response to the State Bar's letters of April 4, 2013 and April 24, 2013, which Respondent's counsel received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 13-O-11703, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

Case No. 14-O-00483 (Complainant: Maha Osmani)

FACTS:

31. Respondent was employed on March 15, 2013 by Maha Osmani ("Osmani") to resolve a dispute between Osmani and The Board of Behavioral Sciences regarding Osmani's attempt to secure certification as a licensed Marriage and Family Therapist.

32. Osmani paid Respondent a total of \$1,631.25 for these services within three separate payments made March 15, April 14 and May 14, 2013.

33. Osmani had earlier failed the licensure examination on October 21, 2010. Having failed to re-take the examination within one year, the Board closed her application on November 3, 2011, at which time Osmani was so notified. It was not until November 19, 2012, that Osmani renewed her application. The renewed application revealed that some of her required supervised hours and personal psychotherapy hours could not be accepted since they were accomplished more than six years prior to the renewed application date.

34. The express objective of the Respondent's retention was to attempt to secure a reversal of the Board's decision to require she repeat her internship requirements that had apparently gone stale.

35. Respondent expressed to Osmani that he was confident that one letter to the Board from him would allow the Board to reopen her case and allow her to retake the examination while honoring her earlier accumulated internship hours.

36. Respondent failed to generate the letter to the Board and failed to make any contact with the Board on Osmani's behalf.

37. Eight or more requests from Osmani to Respondent in the form of phone calls and e-mails from July through November 2013 for a status update went unanswered. On November 16, 2013, Osmani e-mailed Respondent and demanded a full refund.

38. To date, no refund or accounting has been forthcoming. On December 13, 2013, Osmani e-mailed Respondent renewing her refund demand and also requesting the return of her file materials. No file materials have been returned to Osmani.

CONCLUSIONS OF LAW:

39. By failing to communicate with Board of Behavioral Sciences of behalf of Osmani to secure her certification as a licensed Marriage and Family Therapist, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).]

40. By failing to release promptly, after termination of Respondent's employment on or about November 16, 2013, all of the client's papers and property following the client's request for the client's file on December 13, 2013, Respondent willfully violated the Rules of Professional Conduct, rule 3-700(D)(1).

41. By failing to refund Osmani any part of the advanced fees of \$1,631.25 none of which were earned upon Respondent's termination of employment on or about November 16, 2013, Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2).

42. By failing to respond to Osmani's eight reasonable status inquiries which he received between July and November 2013, seeking information with respect to his efforts on her behalf regarding her dispute with the Board of Behavioral Sciences, Respondent wilfully violated Business and Professions Code section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Harm (Standard 1.5(j)): Respondent's calculated and deliberate misrepresentations to his clients concerning the quality of his efforts and status of matters severely prejudiced his clients' best interests, caused them embarrassment and in one matter fatally compromised the client's rights and remedies. In three of these four matters his mishandling of the case resulted in significant harm and delay to the client. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, where attorney's loss of client's cause of action constituted significant harm.)

Multiple Acts of Misconduct (Standard 1.5(b)): Respondent committed multiple acts of misconduct, specifically violations of Rules of Professional Conduct, rule 3-110(A) [failure to perform], rule 4-100(B)(3) [failure to render accounts of client funds], rule 3-700(D)(1) [failure to return file] and

rule 3-700(D)(2) [failure to refund unearned fee], as well as one count of violation of Business and Professions Code sections 6106 [moral turpitude/misrepresentations], 6106.3 [violation of Civil Code section 2944.7], two counts of violation of section 6068(i) [failure to cooperate with State Bar investigation] and 6068(m) [failure to communicate]. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93.)

Failure to Make Restitution (Standard 1.5(m)): Respondent failed to refund unearned fees to Plonka and Osmani and failed to refund illegal fees to Williams.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although his misconduct is serious, Respondent is entitled to some mitigation by virtue of his seven years of pre-misconduct discipline free practice. *In re Naney* (1990) 51 Cal. 3rd 186, 196; *Cooper v. State Bar* (1987) 43 Cal. 3rd 1016, 1029 and noting that, under standard 1.2(e)(i), the Supreme Court has repeatedly given mitigation for no prior record of discipline in cases in which the misconduct was serious.

Pretrial Stipulation: Respondent has stipulated to misconduct and thereby demonstrated his cooperation with the State Bar and saved the State Bar's resources and also shows acknowledgement of wrongdoing. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing thirteen acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in standard 2.11, which applies to Respondent’s violation of section 6106 of the Business and Professions Code. Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentionally or grossly negligent misrepresentation or concealment of a material fact. The degree of sanction depends upon the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.

In analyzing the factors of Standard 2.11, first the magnitude of the misconduct is significant. In these consolidated matters, respondent’s misrepresentations to his client Plonka concerning his performance and protection of his clients litigation rights and interests, constitutes acts of moral turpitude. After he had totally compromised Plonka’s case against his former attorney, respondent attempted to blame Plonka’s behavior as the reason negotiations stalled out. Respondent’s dishonesty resulted in the dismissal of Plonka’s case causing Plonka significant harm.

In these consolidated matters, respondent’s misconduct is serious. Respondent repeatedly misrepresented to his client the accurate status of their matter and what efforts he was pursuing to accomplish their objectives. The misrepresentation did not accurately reflect the available remedies to the client or the accurate status of what respondent had performed to accomplish the client’s objectives.

Misrepresentations to the client as to what has been done on his behalf, diminishes the public’s confidence in the integrity of the legal profession. An attorney’s false statements violate “the fundamental rules of ethics--that of common honesty--without which the profession is worse than valueless in the place it holds in the administration of justice.” (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 (internal citations omitted)).

Therefore, this matter warrants a six month actual suspension, two year stayed suspension and two years of probation. The discipline is consistent with case law. (*Carter v. State Bar* (1988) 44 Cal. 3rd 1091 [imposing a six month actual suspension upon a respondent who failed to file actions, made misrepresentations to his clients, refused to return papers and improperly withdrew from representation, in two client matters, had one prior for similar conduct, caused the client harm, showed no remorse and had no mitigation]; *Bach v. State Bar* (1987) 43 Cal. 3rd 848 [imposing sixty day actual suspension upon a respondent who misled a judge regarding his obligation to produce his client for a mediation with aggravation of a prior public reproof]; *Layton v. State Bar* (1990) 50 Cal. 3rd 889 [imposing a thirty day actual suspension on an attorney who over a five year period failed to conserve the assets and distribute an estate for which he was the attorney and executor aggravated by harm to the client and mitigated by a thirty year practice without discipline.]). Respondent’s misconduct is more voluminous than that of the attorney in *Carter*, inasmuch as it involves more misconduct due to the illegal fee and multiple failures to cooperate. However, the aggravation herein is not as extensive as in *Carter*, where the attorney had one prior for similar conduct, caused client harm and showed no remorse, and the lack of prior discipline herein and fact that respondent entered into a pre-trial stipulation tempers the aggravation.

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>
13-O-11703	Nine	Moral turpitude/misrepresentation

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of January 4, 2016, the prosecution costs in this matter are approximately \$7059. 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, State Bar Client Trust Accounting 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.)

(Do not write above this line.)

In the Matter of: JOEL SAMUEL FARKAS	Case number(s): 12-O-18036-DFM, 12-O-18054, 13-O-11703, 14-O-00483
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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>1/20/16</u> Date	<u>Joel Farkas</u> Respondent's Signature	<u>Joel S. Farkas</u> Print Name
<u>[Signature]</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>[Signature]</u> Print Name
<u>January 20 2016</u> Date	<u>Hugh G Radigan</u> Deputy Trial Counsel's Signature	<u>Hugh G. Radigan</u> Print Name

(Do not write above this line.)

In the Matter of: JOEL SAMUEL FARKAS	Case Number(s): 12-O-18036-DFM, 12-O-18054, 13-O-11703, 14-O-00483
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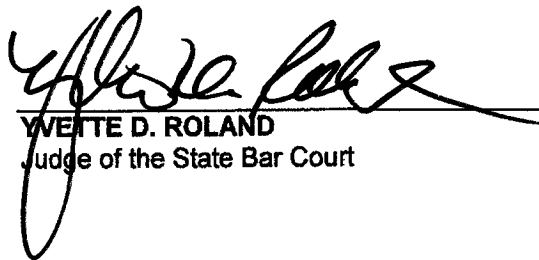
ACTUAL SUSPENSION ORDER

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.)**

February 10, 2016
Date


YVETTE D. ROLAND
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 February 11, 2016, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

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:

**JOEL SAMUEL FARKAS
12711 VENTURA BLVD., SUITE 495
STUDIO CITY, CA 91604**

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 11, 2016.



Tammy Cleaver
Case Administrator
State Bar Court