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**State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION**

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Counsel For The State Bar Jonathan Ceseña Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2013 Bar # 289721	Case Number(s): 13-H-13261	For Court use only PUBLIC MATTER FILED ✓ JAN 22 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Frank Epstein 1519 Tennessee St. Vallejo, CA 94590 (707) 712-7645 Bar # 97325	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: FRANK EPSTEIN Bar # 97325 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 11, 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 10 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."

- (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 from 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 04-O-14278 (07-O-14039) See Attachment at page 9.
 - (b) Date prior discipline effective October 4, 2011
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rule 3-110(A) [failing to perform in one client matter] and Business and Professions Code section 6068(l) [failing to keep agreements made in lieu of disciplinary prosecution.]
 - (d) Degree of prior discipline Public Reprimand
 - (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.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See Attachment at page 8.
- (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.

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- (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:

Pre-trial Stipulation. See Attachment at page 8.

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 90 days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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

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- (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 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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: FRANK EPSTEIN

CASE NUMBER: 13-H-13261

FACTS.

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. 13-H-13261 (Reproval Violation)

FACTS:

1. On August 29, 2011, the State Bar Court issued an order imposing a public reproval with conditions upon Respondent in State Bar case numbers 04-O-14278 and 07-O-14039. Respondent was required to comply with conditions attached to the reproval for one year after its effective date. The conditions attached to the reproval were specified in the reproval order. Respondent received the reproval order.
2. October 4, 2011, the reproval order took effect and remained in full force until October 4, 2012.
3. Pursuant to the reproval order, Respondent was ordered to comply with the following conditions:
 - a. Submit written quarterly reports to the Office of Probation on January 10, 2012, April 10, 2012, July 10, 2012, and October 4, 2012 (Final Report);
 - b. Comply with all provisions and conditions of Respondent's Participation with the Lawyers Assistance Program ("LAP"), and immediately report any non-compliance with any LAP provision to the Office of Probation;
 - c. Have LAP submit written quarterly reports to the Office of Probation on or before January 10, 2012, April 10, 2012, July 10, 2012, and October 4, 2012;
 - d. Attend an LAP group meeting each week during the condition period; and,
 - e. Provide to the Office of Probation satisfactory proof of passage of the Multistate Professional Responsibility Examination ("MPRE") not later than October 4, 2012.
4. Respondent failed to timely submit the quarterly reports due on April 10, 2012, and July 10, 2012.

5. Respondent failed to submit the quarterly report due on October 4, 2012 (final report).

6. Respondent failed to have LAP timely submit quarterly reports on his behalf due on January 10, 2012, April 10, 2012, and July 10, 2012, and on October 4, 2012 (final report).

7. On November 1, 2012, the State Bar Court issued an order granting Respondent's request for an extension to provide proof of passage of the MPRE, and ordered a new due date of May 21, 2013. Respondent did not provide proof of passage of the MPRE to the Office of Probation by May 21, 2013.

CONCLUSIONS OF LAW.

8. By failing to timely submit quarterly reports due on April 10, 2012, July 10, 2012, and October 4, 2012, by failing to have LAP timely submit quarterly reports due on January 10, 2012, April 10, 2012, July 10, 2012, and October 4, 2012, and by failing to provide proof of timely passage of the MPRE by May 21, 2013, Respondent failed to comply with conditions attached to the public reproof in willful violation of rule 1-110 of the Rules of Professional Conduct.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): On August 29, 2011, the State Bar Court issued a decision and order in Case Nos. 04-O-14278 and 07-O-14039, after Respondent's successful completion of the Alternative Discipline Program. The Court ordered that Respondent be publicly reproofed with conditions. In Case No. 04-O-14278, Respondent failed to perform with competence on behalf of a client in a dissolution matter. In Case No. 07-O-14039, Respondent failed to keep all agreements made in lieu of disciplinary proceedings by failing to attend State Bar Ethics School, failing to take and pass the MPRE and failing to provide proof of attendance and passage to the Office of Probation. The order became effective October 4, 2011.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent's violation of numerous conditions of his reproof constitutes multiple acts of misconduct.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994).

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.)

Standard 2.9 applies to Respondent’s misconduct. Standard 2.9 provides that culpability of a member of a willful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Standard 1.7(a) is also applicable due to Respondent’s prior record of discipline, and provides that if a member has a record of one prior discipline, the degree of discipline in the current proceeding shall be greater than the discipline imposed in the prior proceeding, subject to an exception not applicable here. As noted above, Respondent has a record of prior discipline for the same type of misconduct present in this case, which is neither remote in time nor minimal in severity. Accordingly, Standard 1.7(a) calls for discipline greater than the public reproof.

Here, Respondent failed to comply with multiple reproof conditions by failing to timely submit two quarterly reports, failing to submit the final quarterly report, failing to have LAP timely submit four quarterly reports, and failing to submit proof of timely passage of the MPRE. Most significantly, Respondent’s failure to provide proof of passage of the MPRE is the exact same misconduct in his prior discipline.

In cases involving violations of probation (or reproof conditions), more serious sanctions should be imposed for violations closely related to the reasons for imposing the previous discipline or closely related to rehabilitation. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.) Here, Respondent’s failure to comply with reproof conditions is directly related to his previous discipline. In each case, Respondent failed to comply with the conditions of the discipline imposed and demonstrated an unwillingness or inability to conform his conduct to the law and court orders. Moreover, the reproof conditions are intended to assist Respondent with his rehabilitation. The MPRE condition required Respondent to demonstrate his knowledge of the ethical standards of the profession because his initial misconduct related to the practice of law. (See *Segretti v. State Bar* (1976) 15 Cal. 3d 878, 890.) The quarterly reporting condition required Respondent to report his compliance with the State Bar Act and Rules of Professional Conduct.

In aggravation, Respondent has a prior record of discipline and committed multiple acts of misconduct. In mitigation, Respondent has agreed to enter into this Stipulation.

Based on the repetitive nature of Respondent’s misconduct, the facts in aggravation, and limited mitigation, a 90-day actual suspension, accompanied by a two-year probationary period will serve the purposes of State Bar discipline.

Case law also supports actual suspension. In *Conroy v. State Bar* (1990) 51 Cal.3d 799, the Supreme Court imposed a 60-day actual suspension for the attorney's failure to take and pass the PRE (now MPRE) which was a condition of a private reproof. (*Id.* at p. 806.) The Supreme Court found that the attorney's misconduct was aggravated by his prior record of discipline, failure to appreciate the seriousness of the charges and failure to demonstrate remorse for his misconduct. (*Ibid.*) The Supreme Court also found an absence of significant mitigating circumstances. Here, Respondent's misconduct is similar to, yet more egregious than, the misconduct in *Conroy* since it involves multiple violations of the conditions attached to a reproof. In addition, Respondent is not entitled to any mitigation other than credit for entering into a pre-trial stipulation.

Balancing all of the appropriate factors, a 90-day actual suspension is appropriate under the standards and case law and accomplishes the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of December 12, 2013, the prosecution costs in this matter are \$3,419.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceeding.

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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In the Matter of: FRANK EPSTEIN	Case number(s): 13-H-13261
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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.

1/2/2014 *Frank Epstein* FRANK EPSTEIN
Date Respondent's Signature Print Name

January 6, 2014 *Jonathan Cesena* Jonathan Cesena
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: FRANK EPSTEIN	Case Number(s): 13-H-13261
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

Jan 22, 2014


PAT E. McELROY
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 San Francisco, on January 22, 2014, 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:

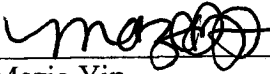
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

FRANK EPSTEIN
1519 TENNESSEE ST
VALLEJO, CA 94590

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

JONATHAN R. CESENA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 22, 2014.



Mazie Yip
Case Administrator
State Bar Court