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

<p>Counsel For The State Bar</p> <p>Robert A. Henderson Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385</p> <p>Bar # 173205</p>	<p>Case Number(s): 13-O-10697-PEM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED </p> <p>DEC 13 2013</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Gordon Dean Brown 400 29th St., Suite 206 Oakland, CA 94609 (510) 836-0600</p> <p>Bar # 171745</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: GORDON DEAN BROWN</p> <p>Bar # 171745</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted October 18, 1994.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Effective January 1, 2011)

Actual Suspension



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

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (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.

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- (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 to Stipulation at p. 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.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

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

Additional mitigating circumstances:

No prior discipline, see Attachment to Stipulation at p. 8.

Pretrial stipulation, see Attachment to Stipulation at p. 8.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one-year.

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

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

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of two-years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

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

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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: GORDON DEAN BROWN

CASE NUMBER: 13-O-10697-PEM

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. 13-O-10697 (Complainant: Monique Harriel)

FACTS:

1. On March 12, 2011, Monique Harriel ("Harriel") and her adult daughters, Monica Bogans and Kenisha Bogans ("the Bogans"), were involved in an auto accident with Jennifer Martin. Jennifer Martin's insurance carrier, USAA Insurance ("USAA"), assigned the auto insurance matter claim no. 007905541-5.
2. In March 2011, Harriel employed Respondent to represent her and the Bogans, in the matter arising out of the March 12, 2011, auto accident.
3. At no time prior to employment or after employment did Respondent explain the potential conflict between his multiple clients. At no time prior to employment or after employment did Respondent obtain a signed written consent to the potential conflict of interest for the multiple clients.
4. On May 19, 2011, Respondent wrote a letter to USAA, confirming his representation of Harriel and the Bogans.
5. From June 16, 2011, through January 7, 2013, USAA sent 13 letters to Respondent requesting medical bills and records for Harriel and the Bogans. Respondent received the letters from USAA shortly after they were sent, but did not provide USAA with the requested information.
6. On January 16, 2013, Respondent met Harriel at her home. At the meeting, Respondent presented Harriel with a "RELEASE IN FULL OF ALL CLAIMS AND RIGHTS" ("Release") for claim no. 007905541-5. The Release stated in part: "For and in consideration of the sum of Sixty-eight Hundred Dollars and 0/00 Dollars (\$6,800.00). I, Monique Harriel, Monica Bogans and Kenisha Bogans, release and forever discharge Jennifer J. Martin, Claim No. 007905541-5, . . ."
7. In truth and in fact, as of January 16, 2013, neither Jennifer J. Martin nor USAA had authorized a settlement of claim no. 007905541-5. In truth and in fact, Respondent created the Release in an effort to mislead Harriel and the Bogans regarding the status of the insurance claim.

8. Between March 2011 and January 18, 2013, Respondent failed to provide USAA with the medical bills and records supporting the claimed damages of Harriel and the Bogans. Between March 2011 and January 18, 2013, Respondent did not take any affirmative action on behalf of Harriel and the Bogans, in claim no. 007905541-5. On January 18, 2013, after discovering Respondent's misconduct, Harriel on behalf of herself and the Bogans, terminated Respondent as their legal representative for claim no. 007905541-5. Thereafter, Harriel settled the matter with the insurance company.

CONCLUSIONS OF LAW:

9. By failing to respond to respond to the 13 letters sent by USAA, by failing to provide USAA with the medical bills and records in support of the claim for damages between March 2011 and January 21, 2013, and by failing to take any action on behalf of the clients after sending the May 19, 2011 letter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

10. By creating a document entitled "Release in Full of All Claims and Rights" while knowing that the statements in the release were false and by providing the release in an attempt to mislead his clients regarding the status of their claim, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code section 6106.

11. By accepting representation of Monique Harriel, Monica Bogans and Kenisha Bogans, in joint representation as claimants in a personal injury matter without advising the clients of the relevant circumstances and reasonably foreseeable adverse consequences to the joint representation and by failing to obtain the written consent of each client to the conflict of interest, Respondent failed to obtain the written consent of each client, in willful violation of the Rules of Professional Conduct, rule 3-310(C)(1).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent engaged in three acts of misconduct in his representation of Harriel and the Bogans. These multiple acts of misconduct constitute an aggravating factor. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 498, 555.)

MITIGATING CIRCUMSTANCES.

No prior discipline: Although Respondent's misconduct is serious, he is entitled to mitigation since he has been practicing law for nineteen years without a prior record of discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41, 49.)

Pretrial Stipulation: Respondent has voluntarily entered into this stipulation and should receive mitigation credit for his admission of culpability and consent to the imposition of discipline. (See *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 provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

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

Respondent has committed three acts of misconduct. Following Standard 1.6(a), we apply the most severe sanction applicable, which in this case is standard 2.3 which states: “Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.”

Here, Respondent failed to perform in a personal injury matter and failed to advise his clients of a potential conflict and obtain their consent. Respondent also misrepresented that a settlement had been reached and fabricated a release to cover up his failure to perform for his clients. Respondent's misconduct is serious and directly related to the practice of law. Although Respondent's clients were not fooled by Respondent's deceit, his failure to perform harmed his clients because they were not able to timely resolve their matter. In aggravation, Respondent engaged in multiple acts of misconduct. In mitigation, Respondent has agreed to enter into this stipulation and Respondent has been in practice nineteen years with no discipline, but this warrants limited weight due to the seriousness of Respondent's fabrication of a Release of Claims. When the magnitude of the misconduct committed is considered with the aggravating and mitigating circumstances presented, a 60-day actual suspension is warranted under Standard 2.3.

In *Gold v. State Bar* (1989) 49 Cal.3d 908, the Supreme Court imposed a 30-day actual suspension for an attorney that created a fraudulent disbursement schedule in a case that had been dismissed for failure to prosecute. Pursuant to the fraudulent disbursement schedule, the attorney provided his client \$907.25. The attorney created the fraudulent disbursement schedule in an effort to avoid telling his client that the case had been dismissed. The Supreme Court found significant mitigation for the attorney's payment of the \$907.25, which the Court found to be an effort to make the client whole. The Court also found the absence of a prior record of discipline for the attorney's 25 years in practice to be a strong mitigating factor.

Here as in *Gold*, Respondent attempted to mislead his clients into believing the matter had reached a proper conclusion. Respondent's effort to mislead his clients ultimately failed, but the attempted deception cut to the core of his legal representation. In addition, Respondent failed to perform, had a conflict of interest and the aggravating factor of multiple acts of misconduct. Respondent in this matter does not have the mitigation found in *Gold*. Therefore the level of discipline in this matter should be greater than was the case in *Gold*.

A 60-day actual suspension from the practice of law will adequately protect the public, the courts and the profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 15, 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 proceedings.

EXCLUSION FROM MCLE CREDIT

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

(Do not write above this line.)

In the Matter of: GORDON DEAN BROWN	Case number(s): 13-O-10697-PEM
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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>11-21-13</u> Date	<u>Gordon D. Brown</u> Respondent's Signature	<u>Gordon Dean Brown</u> Print Name
<u>11/21/13</u> Date	<u>Robert A. Henderson</u> Deputy Trial Counsel's Signature	<u>Robert A. Henderson</u> Print Name

(Do not write above this line.)

In the Matter of:
GORDON DEAN BROWN

Case Number(s):
13-O-10697-PEM

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.

1. On page 8 of the Stipulation, numbered paragraph 9, line 3, "January 21, 2013" is deleted and in its place is inserted "January 18, 2013."

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.)**

December 13, 2013
Date

Pat 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 December 13, 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:

GORDON D. BROWN
400 29TH ST STE 206
OAKLAND, CA 94609

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

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 13, 2013.


Laurretta Cramer
Case Administrator
State Bar Court