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State Bar Court of California  
Hearing Department  
Los Angeles  
REPROVAL

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Bar # 171419

Case Number(s):  
13-O-10808-GES  
13-O-11921

For Court use only

**NOT FOR PUBLICATION**

**PUBLIC MATTER**

**FILED**

**JUL 22 2014**



STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

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Bar # 77688

Submitted to: **Settlement Judge**

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

In the Matter of:  
**DANIEL ANDREW GIBALEVICH**

Bar # 217116

**PRIVATE REPROVAL**

PREVIOUS STIPULATION REJECTED

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.**

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**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 4, 2001**.
- (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".

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
  - Case ineligible for costs (private reproof).
  - 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.
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 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 or a separate attachment entitled "Prior Discipline."

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- (2)  **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **Restitution:** Respondent failed to make restitution.
- (9)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 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 with a good faith belief that was honestly held and 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 subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Discipline, Remedial Measures, Pre-Trial Stipulation. See page 8.**

**D. Discipline:**

- (1)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).
- or
- (2)  **Public reproof (Check applicable conditions, if any, below)**

**E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of **one (1) year**.
- (2)  During the condition period attached to the reproof, 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 condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of

Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- No MPRE recommended. Reason: \_\_\_\_\_
- (11)  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:**



Pocasangre matter. Respondent told Pocasangre that the court had dismissed the Pocasangre matter on November 9, 2007. Shortly after meeting with Respondent, Pocasangre filed a complaint with the State Bar.

#### CONCLUSION OF LAW:

9. By not telling Pocasangre until January 2013 that the Superior Court had dismissed his case, Respondent failed to keep Pocasangre reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

#### Case No. 13-O-11921 (Complainant: Teresa Alvarez)

#### FACTS:

10. In January 2009, Teresa Alvarez slipped and fell in the Augustine Indian Casino (casino). Alvarez filed a tort claim with Tribal First (the third-party claims administrators for the Augustine Indian tribe), and it was denied. Alvarez appealed the denial and the appeal was denied.

11. On October 17, 2009, Alvarez hired Respondent to pursue her claim against the casino. Respondent's fee agreement stated that Respondent agreed to take Alvarez' case through trial but that Respondent would not appeal her claim.

12. On November 9, 2009, Respondent contacted a representative of Tribal First who told Respondent that an appeal must be filed with the Augustine Indian Tribal Council. On December 24, 2009, Respondent filed a tort claim with Tribal First.

13. On January 29, 2010, Tribal First sent Respondent a copy of the denial letter it had previously sent to Alvarez and informed Respondent that it had video that showed it was not negligent and that Alvarez caused or contributed to her injuries by texting on her phone while she was walking. Respondent did not file an appeal with the Tribal Council.

14. In February 2012, Alvarez contacted Respondent and asked for a meeting to discuss the status of her case. In April 2012, Respondent met with Alvarez. Respondent informed Alvarez that Tribal First denied her claim and that he was not going to appeal the denial of her claim.

15. Between January 2010 and April 2012, Respondent did not tell Alvarez that the casino denied the claim that Respondent filed in 2009, and/or that the Casino claimed that it had video evidence that showed that it was not negligent and that Alvarez' texting while walking may have contributed to her injuries. According to Respondent, due to inadequate office procedures and understaffing, Respondent was not aware that Alvarez was not informed of the status of her case until February 2012.

#### CONCLUSION OF LAW:

16. By not telling Alvarez until April 2012, that the casino denied the claim that Respondent filed in 2009 and/or that the Casino claimed that it had video evidence that showed that it was not negligent and that Alvarez' texting while walking may have contributed to her injuries, Respondent failed to keep Alvarez reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section

## MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to practice law in California in 2001 and had practiced for more than six years with no record of discipline at the time the earliest misconduct in this stipulation commenced and is entitled to some mitigation. (*In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44.)

### **Remedial Measures:**

Respondent failed to communicate the case status to two of his clients, but Respondent has taken remedial measures to insure that his current and future clients remain informed of the status of their cases including hiring more staff and instituting more rigorous file review protocols. (*In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct Rptr. 404, 416-417, [the attorney received mitigation credit by taking remedial steps to cure the office practices that led to the misconduct.]

### **Pretrial Stipulation:**

Respondent admitted to the misconduct and entered into this stipulation fully resolving these matters prior to trial. Respondent's cooperation at this stage has saved the State Bar resources and time. Respondent is entitled to mitigation for his cooperation. (*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.) Nevertheless, the California Supreme Court does not follow the standards "in talismanic fashion." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) 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.)

The sanction applicable to Respondent's misconduct is found in Standard 2.5, which applies to Respondent's two violations of Business and Professions Code section 6068(m). Standard 2.5 provides that a reproof is appropriate for failing to properly communicate in a single client matter (Standard 2.5(c)), and that actual suspension is appropriate for failing to communicate in multiple client matters. (Standard 2.5 (b)).

In this case, it is appropriate to deviate from the level of discipline suggested by Standard 2.5(b). First, the two failures to communicate significant developments appear to have been aberrational events in that Respondent had practiced law for more than six years without discipline prior to the misconduct. In addition, the misconduct in the Pocasangre matter occurred more than six years ago, and the misconduct in the Alvarez matter occurred more than four years ago. Further, in the Pocasangre matter, although Respondent did not promptly notify Pocasangre that his case had been dismissed, Respondent did attempt to communicate with Pocasangre by sending letters in December 2007 and January 2008 requesting Pocasangre to contact Respondent regarding the scheduled mediation. In addition, Pocasangre's work frequently took him out of the country, and when Pocasangre was out of the country, Respondent had no way to contact Pocasangre. Pocasangre did not respond to the two letters that Respondent sent to him and remained out of contact with Respondent until 2013. In addition, in both matters, Respondent eventually notified the clients of the significant developments and in the Pocasangre matter, did so before Pocasangre filed a complaint with the State Bar. Finally, Respondent has accepted responsibility for his misconduct by entering into this stipulation to fully resolve the matter. By so doing, Respondent has demonstrated his willingness to comply with his ethical responsibilities in the future.

In light of the particular facts of this matter, and balancing the mitigating factors against the misconduct in this matter, actual suspension pursuant to Standard 2.5(b) would be unjust. A private reproof with conditions for a period of a year is appropriate to address Respondent's misconduct and will serve to protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession.

#### **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-10808	One	3-110(A)
13-O-11921	Three	3-110(A)

#### **EXCLUSION FROM MCLE CREDIT**

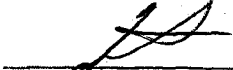
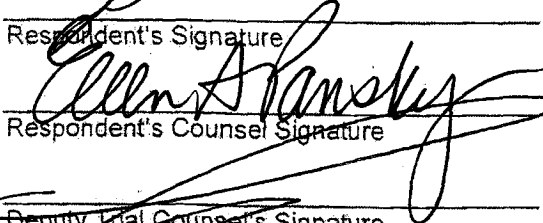
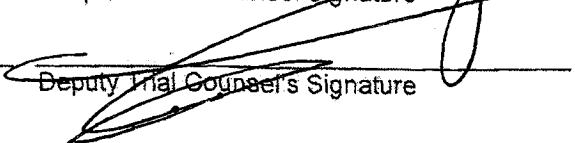
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of Ethics School or the Multistate Professional Responsibility Exam. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DANIEL ANDREW GIBALEVICH	Case number(s): 13-O-10808; 13-O-11921
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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>6/26/14</u> Date	 Respondent's Signature	<u>DANIEL ANDREW GIBALEVICH</u> Print Name
<u>6/26/14</u> Date	 Respondent's Counsel Signature	<u>ELLEN PANSKY</u> Print Name
<u>6/27/14</u> Date	 Deputy Trial Counsel's Signature	<u>ANTHONY GARCIA</u> Print Name

(Do not write above this line.)

In the Matter of: DANIEL ANDREW GIBALEVICH	Case Number(s): 13-O-10808; 13-O-11921
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### REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovial, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department 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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reprovial may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

Date July 18, 2014   
GEORGE E. SCOTT, JUDGE PRO TEM  
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 July 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:

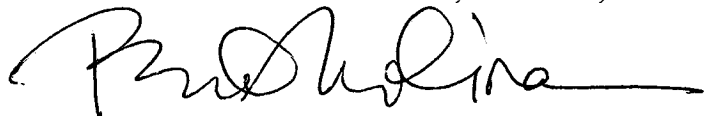
ELLEN ANNE PANSKY  
PANSKY MARKLE HAM LLP  
1010 SYCAMORE AVE UNIT 308  
SOUTH PASADENA, CA 91030

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

ANTHONY J. GARCIA, Enforcement, Los Angeles

TERRIE L. GOLDADE, Probation, Los Angeles

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



Bernadette C.O. Molina  
Case Administrator  
State Bar Court