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

Counsel For The State Bar Robert A. Henderson Senior Trial Counsel 180 Howard St. San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case Number(s): 13-O-11012-PEM	For Court use only PUBLIC MATTER FILED DEC 20 2013 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Gaspar R. Garcia, II 7 Park Vista Circle Sacramento, CA 95831 (916) 274-1500 Bar # 215762	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: GASPAR ROBERTO GARCIA, II Bar # 215762 A Member of the State Bar of California (Respondent)	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 December 3, 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 12 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)



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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: (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 12-O-13163. [See attachment to stipulation at pp. 8-9.]
 - (b) Date prior discipline effective August 9, 2013.
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 3-110(A) [failure to perform competently]; 3-700(D)(1) [failure to promptly return client file]; 4-200(A) [charging an unconscionable fee]; and Business and Professions Code, sections 6068(i) [failure to cooperate in a State Bar investigation; 6068(m) [failure to communicate] - two violations; and 6106 [moral turpitude] - two violations.
 - (d) Degree of prior discipline two-years stayed, three-years probation on condition of one year actual suspension and other conditions of probation.
 - (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.

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- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-trial stipulation - See attachment to stipulation at p. 9.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of three 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 three 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 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:

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.

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- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input 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

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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:**

10. On June 24, 2011, the court granted Martin's unopposed motion to dismiss Martin from the case.

11. On July 7, 2011, the court filed its "Order Granting Defendant James Martin's Motion to Dismiss and Entry of Judgment in His Favor."

12. On July 11, 2011, Judgment was entered by the court against Patche and in favor of CDGS.

13. Respondent never informed Patche that: 1) the TAC had been stricken; 2) the case was dismissed; 3) Martin was dismissed from the case; 4) judgment had been entered in favor of CDGS; and 5) judgment had been entered in favor of Martin.

14. On February 12, 2013, the State Bar opened an investigation, case no. 13-O-11012, concerning Respondent's representation of Karen Patche ("Patche matter").

15. On March 13, 2013, and June 12, 2013, a State Bar investigator sent letters to Respondent regarding the Patche matter. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Patche matter. Respondent received, but did not respond to the investigator's letter or otherwise communicate with the investigator.

CONCLUSIONS OF LAW:

16. By filing a deficient TAC, by failing to properly seek permission to file a Fourth Amended Complaint and by failing to oppose the motion to dismiss the TAC by CDGS and the motion to dismiss Martin from the case, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

17. By failing to inform Patche that her TAC had been stricken, that the case had been dismissed, that Martin had been dismissed from the case and that judgment had been entered in favor of CDGS and Martin, Respondent failed to keep a client 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).

18. By not providing a written response to the allegations in the Patche matter or otherwise cooperating in the investigation of the Patche matter, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has a prior record of discipline which stemmed from his conduct in a single client matter. From September 2010 through June of 2012, Respondent ceased performing and ceased communicating with his client. In addition, Respondent charged an unconscionable fee, misrepresented the status of the matter to his client, made an

unauthorized charge on his client's credit card, failed to release the client file and failed to cooperate in the disciplinary investigation.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent engaged in three acts of misconduct in his representation of Patche. 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.)

Harm (Std. 1.2(b)(iv)): Respondent's failure to perform competently, resulted in Patche's case being dismissed, which significantly harmed Patche, even though the value of the matter was uncertain. (See *In the Matter of Bach*, (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646.)

MITIGATING CIRCUMSTANCES.

Pre-trial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of the Chief Trial Counsel, prior to trial, thereby saving the office and State Bar Court time and resources. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079; *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 [where mitigative credit was given for entering into a stipulation as to facts and culpability].) The weight of the mitigation is tempered by the fact that Respondent failed to participate during the investigation.

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 admits to committing three acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable is found in Standard 2.6(a), which applies to Respondent's violation of Business and Professions Code, section 6068(i), for failing to cooperate in the disciplinary investigation. Standard 2.6(a) states that if a member is culpable of a violation of Business and Professions Code section 6068, the discipline shall be "disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

To determine the proper level of discipline, we examine the gravity of the offense and the gravity of the harm suffered. Here, the gravity of the offense is serious and caused harm to Respondent's client. Respondent failed to perform, failed to keep his client informed of significant events and failed to cooperate in the disciplinary investigation. Respondent's failure to perform resulted in his client's matter being dismissed and judgment being entered in favor of the defendants. Although the underlying claim had an undetermined value, the loss of that claim by the client is significant.

Standard 1.7(a) suggests an increased level of discipline when there is one prior record of discipline. However, when the conduct in the prior and current disciplinary matters overlap, the analysis found in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 is applicable. In *Sklar*, the Review Department held that the impact of a prior disciplinary matter was diminished because it occurred during the same time as the misconduct in the case at issue. Accordingly, the Review Department considered the "totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." (*Id.* at p. 618.)

In this matter, as in *Sklar*, the misconduct falls in the same time frame and is of the same type of misconduct as the prior record of discipline. Therefore, as in *Sklar*, when determining the level of discipline to impose, we look at the totality of the circumstances, with less consideration given to the prior discipline.

Respondent's prior discipline stemmed from a single client matter, but involved: a failure to perform competently which resulted in the dismissal of his client's appeal, a failure to inform his client of the dismissal, a failure to respond to his client's requests for a status update, a misrepresentation to his client that Respondent could reverse the dismissal, a failure to promptly return the client's file, an unconscionable fee charged to the client, an unauthorized credit card charge of \$204.95 on the client's credit card, and a failure to cooperate in the disciplinary investigation. Here, Respondent failed to perform in a single client matter, which resulted in another client losing a cause of action. Respondent also failed to inform the client of significant events and failed to cooperate in the disciplinary investigation. The totality of findings in both cases demonstrates that Respondent's misconduct is serious and repetitive. Plus, the gravity of the harm is great, since Respondent's misconduct resulted in both clients losing their cause of action. In aggravation, Respondent harmed his clients and committed multiple acts of misconduct. Respondent is only entitled to limited mitigation for entering into this stipulation since he failed to cooperate in both disciplinary investigations. Although disbarment is not warranted under the standard, based on the serious nature of Respondent's misconduct, a long actual suspension is appropriate. A two-year actual suspension with a requirement that Respondent prove his rehabilitation before he is relieved from actual suspension will serve the purposes of attorney discipline.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 6, 2013, the prosecution costs in this matter are \$3,419. 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.)

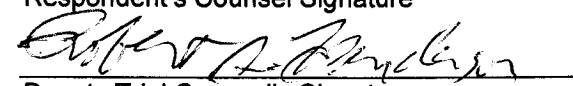
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In the Matter of: GASPAR ROBERTO GARCIA, II	Case number(s): 13-O-11012-PEM
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SIGNATURE OF THE PARTIES

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.

12-13-13  Gaspar Roberto Garcia, II
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name
12/17/13  Robert A. Henderson
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: GASPAR ROBERTO GARCIA, II	Case Number(s): 13-O-11012-PEM
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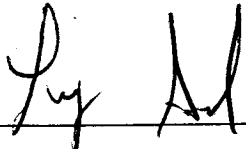
ACTUAL SUSPENSION ORDER

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 Dec. 20, 2013



Judge of the State Bar Court
LUCY ARMENDARIZ

CERTIFICATE OF SERVICE

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

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

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

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

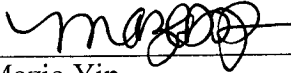
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GASPAR R. GARCIA II
GARCIA AND ASSOCIATES
7 PARK VISTA CIR
SACRAMENTO, CA 95831

- 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 20, 2013.



Mazie Yip
Case Administrator
State Bar Court