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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Hugh G. Radigan Deputy Trial Counsel 845 South Figueroa Street Los Angeles, California 90017-2515 (213) 765-1206 Bar # 94251	Case Number(s): 13-O-11226-LMA	For Court use only PUBLIC MATTER FILED  APR 22 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Kevin Gerry 433 North Camden Drive, 4th Floor Beverly Hills, California 90210 (310) 275-1620 Bar # 129690	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: ANDREW MICHAEL VOGELBACH Bar # 258259 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 **December 1, 2008**.
- (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 **13** 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".

(Effective January 1, 2014)



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

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(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.
- (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. **See attachment, page 10.**
- (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.

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- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See attachment, page 10.**
- (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 product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See attachment, page 10.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) 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 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.

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

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **sixty (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 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

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- (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 checked="" 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: .

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- (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:**

(Do not write above this line.)

In the Matter of:
ANDREW MICHAEL VOGELBACH

Case Number(s):
13-O-11226

Law Office Management Conditions

- a. ☒ Within **60** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANDREW MICHAEL VOGELBACH

CASE NUMBER: 13-O-11226

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-11226 (Complainant: Paula Robertson)

FACTS:

1. Respondent was retained on July 22, 2011 by Paula Robertson ("Robertson"), to pursue a loan modification on her behalf. At the time of the retention the subject property was not in foreclosure, no notice of default had been filed and no notice of trustee sale had been filed.
2. Respondent failed to provide Robertson, prior to entering into that agreement, the following as a separate written statement, in not less than 14-point bold type, as required by Civil Code, section 2944.6, in willful violation of Business and Professions Code, section 6106.3:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

3. Robertson paid Respondent advanced attorney's fees related to the loan modification services totaling \$3,000, between July 27, 2011 and September 27, 2011.
4. On February 8, 2013, Respondent created and/or caused to be created, a making home affordable program request for mortgage assistance. As part of this request Respondent signed or caused to be signed under penalty of perjury, simulating Robertson's signature, a hardship letter, financial worksheet and request for transcript of tax return. These documents contained inaccurate information and had not been reviewed or signed by the client. Respondent submitted these documents to the client's lender, Bank of America.
5. On February 13, 2013, Bank of America requested from Robertson updated financial documentation to facilitate the loan modification application. The representative from Bank of America expressed that they were directly contacting her due to Respondent's lack of responsiveness with respect to providing necessary documentation.

6. On February 20, 2013, Robertson retrieved from Respondent her earlier completed financial information at which time she realized the inaccuracy of the documentation that Respondent transmitted to Bank of America and that Respondent had signed the submitted paperwork for Robertson without her approval or consent.
7. On February 26, 2013, Robertson wrote to Bank of America advising them Respondent had been terminated and that she would be pursuing the loan modification on her own behalf. Respondent was copied on this correspondence.
8. On February 26, 2013, Robertson called Respondent to confirm that he had received the termination letter at which time they discussed a possible refund.
9. On March 13, 2013, Robertson requested an accounting from Respondent regarding those funds earlier paid as advanced fees. Respondent failed to render an appropriate accounting to Robertson.
10. On April 17, 2014, Respondent refunded to Robertson \$3,531.04.

CONCLUSIONS OF LAW:

11. By negotiating, arranging or offering to perform a home mortgage loan modification or mortgage loan forbearance for a fee paid by a client and borrower, namely Robertson, in advance of any service and thereafter entering into a fee agreement with the client without providing the client, prior to entering into that agreement, the separate written statement as required by Civil Code section 2944.6, Respondent wilfully violated Business and Professions Code section 6106.3.
12. By negotiating, arranging or offering to perform a home mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from Robertson prior to fully performing each and every service he contracted to perform or represented he would perform, in violation of Civil Code section 2944.7(a)(1), Respondent willfully violated Business and Professions Code section 6106.3.
13. By creating and/or causing to be created, a making home affordable program request for mortgage assistance which Respondent signed or caused to be signed under penalty of perjury, simulating Robertson's signature, a hardship letter, financial worksheet and request for transcript of tax return, containing inaccurate information and purportedly signed by his client, none of which had been reviewed or signed by the client, and by submitting these documents to the client's lender, Respondent misrepresented to the lender that these were authorized and accurate documents when Respondent knew or was grossly negligent in not knowing the submitted documents had not been reviewed or signed by the client and contained inaccurate information, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.
14. By failing to render an appropriate accounting to Robertson after her demand for an accounting, Respondent willfully violated the Rules of Professional Conduct, rule 4-100(B)(3).

15. By failing to promptly refund any portion of the \$3,000 in advanced attorney fees paid by Robertson, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2)

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent accepted advanced fees from his client to perform a loan modification at a time when the client was suffering financial distress. Respondent's conduct in submitting unauthorized and inaccurate documentation to the lender compromised and delayed the application process to the detriment of the client. Finally, Respondent's delay in refunding fees to his client further caused her harm.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed multiple acts of misconduct, specifically violation of Rules of Professional Conduct, rules 3-700(D)(2) [unearned fee], and 4-100(B)(3)[failure to render accounts] and violations of Business and Professions Code sections 6106 [moral turpitude/misrepresentations], and 6106.3 [accepting an illegal advanced fee].

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Although his misconduct is serious, Respondent is entitled to slight mitigation of little weight by virtue of his five years of discipline free practice. (*Cannon v. State Bar* (1990) 51 Cal. 3rd 1103, 1115 [six years discipline free practice entitled to "little weight"]; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, noting that, the Supreme Court has repeatedly given mitigation for no prior record of discipline in cases in which the misconduct was serious[.])

Pretrial Stipulation: Respondent has stipulated to misconduct and thereby demonstrated his cooperation with the State Bar and saved the State Bar Court's time and resources. (*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 Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, Respondent admits to committing five acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” Standard 1.7(b) provides where aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to recommend greater discipline than otherwise specified in a given standard.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.7, which applies to Respondent’s violation of section 6106 of the Business and Professions Code. Standard 2.7 provides that actual suspension or disbarment is appropriate for an act of moral turpitude, depending upon the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.

In analyzing the factors of Standard 2.7, first the magnitude of the misconduct is significant. In this matter, Respondent signed or caused to be signed under penalty of perjury, simulating Robertson’s signature, documents relating to his client’s loan modification application. Respondent additionally submitted a series of documents to facilitate a loan modification application that required his client’s signature that were neither reviewed nor signed by the client on which he also placed forged signatures. These documents included income statements that were not accurate, a hardship letter, a financial worksheet reflecting income and liabilities and a request for transcript of tax return, all of which reflected the alleged signature of the client. All of this conduct occurred during Respondent’s practice of law during the process of pursuing the loan modification. The attendant harm visited upon the client whose modification application was otherwise delayed and compromised, and whose advanced fees were not refunded during this period of financial distress, is both significant and real.

Respondent’s misconduct is serious. Representations to the client’s lender in forging the client’s signature diminishes the public’s confidence in the integrity of the legal profession. An attorney’s false statements violate “the fundamental rules of ethics- that of common honesty- without which the profession is worse than valueless in the place it holds in the administration of justice.” (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 (internal citations omitted).)

Respondent refunded \$3,531.04 to Robertson on April 17, 2014. The belated refund nevertheless constitutes a degree of acknowledgement that was not earlier present. Considering the factors enumerated in Standard 2.7 and as analyzed above, and considering aggravation and mitigation, this matter warrants a sixty day actual suspension, two year stayed suspension and two years of probation. This level of discipline is warranted to protect the public. The discipline is consistent with case law. (*Carter v. State Bar* (1988) 44 Cal. 3rd 1091 [imposing a six month actual suspension upon a respondent who failed to file actions, made misrepresentations to his clients, refused to return papers and improperly withdrew from representation]; *Bach v. State Bar* (1987) 43 Cal. 3rd 848 [imposing sixty day actual suspension upon a respondent who misled a judge regarding his obligation to produce his client for a mediation with aggravation of a prior public reproof].

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-11226	One	Rule 3-110(A) [Failure to perform]
13-O-11226	Seven	Business and Professions Code section 6090.5 [attorney/client agreement not to file complaint]

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of April 17, 2014, the prosecution costs in this matter are approximately \$6,944. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT.

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, State Bar Client Trust Accounting School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)


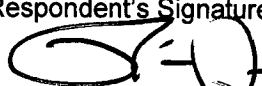
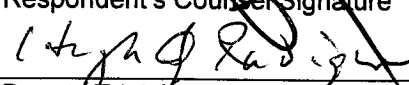
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In the Matter of:
ANDREW MICHAEL VOGELBACH

Case number(s):
13-O-11226

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>April 17, 2014</u>	<u></u>	<u>Andrew Michael Vogelbach</u>
Date	Respondent's Signature	Print Name
<u>April 17, 2014</u>	<u></u>	<u>Kevin Gerry</u>
Date	Respondent's Counsel Signature	Print Name
<u>April 17 '14</u>	<u></u>	<u>Hugh G. Radigan</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:
ANDREW MICHAEL VOGELBACH

Case Number(s):
13-O-11226-LMA

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

4/21/14

Judge of the State Bar Court

DONALD F. MILES

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 April 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:

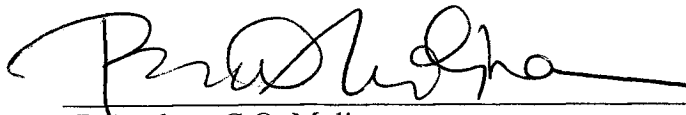
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KEVIN P. GERRY
THE LAW OFFICES OF KEVIN GERRY
433 N. CAMDEN DRIVE, 4TH FLOOR
BEVERLY HILLS, CA 90210

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

HUGH G. RADIGAN, Enforcement, Los Angeles

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



Bernadette C.O. Molina
Case Administrator
State Bar Court