PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT 845 S. Figueroa Street, 3rd Floor Los Angeles, CA 90017-2515	FOR CLERK'S USE ONLY: FILED OCT 15 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In the Matter of: **OMID ALEX TOFER,** **Member No. 212308,** A Member of the State Bar	Case No: 13-O-12215-DFM **ORDER APPROVING MODIFICATION OF STIPULATION**

On September 25, 2014, a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Stayed Suspension; No Actual Suspension (Stipulation), previously executed by the parties, was filed by this court.

On September 29, 2014, the State Bar filed a motion to modify the Stipulation to amend the standard stated in the Stipulation to be applicable to the matter. In the Stipulation, the applicable standard was stated to be standard 2.4(b). The motion seeks to replace that standard with reference to standard 2.5(c). This proposed modification does affect the agreed and approved level of discipline.

No opposition to this request having been made by Respondent and good cause appearing, the motion is granted. The original page 10 of the Stipulation is hereby deleted and replaced with the amended page 10, attached hereto and incorporated herein by reference. As modified herein, the Stipulation is again approved by this court and recommended to the Supreme Court. The new time for the parties to object to the amended Stipulation and order is calculated as set forth in the original order contained in the Stipulation.

IT IS SO ORDERED.

Dated: October 15, 2014

DONALD F. MILES
Judge of the State Bar Court

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Pretrial Stipulation: Respondent has stipulated to misconduct and thereby demonstrated his cooperation with the State Bar and saved the State Bar's 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).)

The most severe sanction applicable to Respondent's misconduct is found in Standard 2.5(c), which applies to Respondent's violation of Rules of Professional Conduct, rule 3-110(A). Standard 2.5(c) provides that reproval is appropriate for failing to perform legal services or properly communicate in a single client matter. Here, the parties have acknowledged that a stayed suspension is an appropriate resolution of this matter and merited by virtue of the numerous activities itemized below that evidence multiple acts of lack of improper supervision which led to the deception, and which, had they been performed by Respondent himself, would constitute moral turpitude.

Analyzed under the standards, the misconduct which Respondent committed is limited to one individual client matter. Arguably, there was no harm to either the client or the carrier, Mercury, occasioned by this conduct since both implicitly agreed upon the amounts appropriate to settle these claims. Moreover, Elena's claim would have survived her death had the appropriate amendment to add the estate as party plaintiff been made. The office staff failed to appreciate that the death of client could have no adverse impact upon the negotiated value or resolution of the mother's claim. Nevertheless, they continued to misrepresent her status as deteriorating during negotiations so as to extract a nominally better offer, when they knew that the woman was deceased. The staff then incorrectly entered a date upon an otherwise undated release and proffered it to Mercury to resolve the claim. The staff then misconstrued

DFM

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 Los Angeles, on October 15, 2014, I deposited a true copy of the following document(s):

ORDER APPROVING MODIFICATION OF STIPULATION

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 Los Angeles, California, addressed as follows:

KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 15, 2014.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court