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State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

Counsel For The State Bar	Case Number (s)	(for Court's use)
Robin B. Brune **Senior Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2218** Bar # **149481**	**13-O-17461-LMA**	**PUBLIC MATTER** FILED FEB 19 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent **Jesse Soto Ortiz III** **980 9th Street, Suite 340** **Sacramento, California 95814** **(916) 443-9500** Bar # **176450**	Submitted to: **Program Judge** **STIPULATION RE FACTS AND CONCLUSIONS OF LAW** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: **JESSE SOTO ORTIZ III** Bar # **176450** 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 **June 12, 1995**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.

(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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **7** pages, excluding 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) 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.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see 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 **05-O-02721**

(b) ☒ Date prior discipline effective **January 18, 2007**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules Prof. Conduct, rule 3-700(D)(2) [failure to refund unearned fees]; Bus. & Prof. Code § 6068(m) [failure to communicate].**

(d) ☒ Degree of prior discipline **public reproval**

(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. **See Attachment, page 5.**

(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 6.**

(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. **See Attachment, page 6.**

(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:

Pre-trial Stipulation. See Attachment, page 6.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JESSE SOTO ORTIZ III

CASE NUMBER: 13-O-17461

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-17461 (State Bar Investigation)

FACTS:

1. On December, 11, 2011, Ricky Tran ("Tran") was convicted of two counts of violation of Penal Code section 187(a) (murder) and one count of violation of Penal Code section 664/187(a) (attempted murder) in *People v. Ricky Tran*, case no. 91F09387, filed in the Sacramento Superior Court.

2. On February 12, 2012, Tran employed respondent to file a motion for new trial and to pursue an appeal.

3. On February 13, 2012, respondent filed and pursued a motion for new trial. The motion was denied on February 17, 2012.

4. On March 29, 2012, respondent filed an appeal on behalf of Tran, *People v. Ricky Tran*, case no. C070706, filed in the Court of Appeal for the Third Appellate District (hereinafter "*People v. Ricky Tran*"). Respondent requested extensions to file the opening brief in *People v. Ricky Tran* on the following dates: October 5, 2012, November 30, 2012, and December 14, 2012.

5. The Court granted each of respondent's requests for an extension. On December 14, 2012, the Court granted respondent's December 14, 2012 request for an extension and ordered respondent to file his opening brief by December 21, 2012.

6. Respondent failed to file his opening brief in *People v. Ricky Tran* by December 21, 2012 or at any time thereafter.

7. On December 26, 2012, the Court dismissed *People v. Ricky Tran* due to respondent's failure to file an opening brief. On December 26, 2012, the court clerk served respondent with the notice of dismissal. Respondent received the notice of dismissal and was aware of it.

8. Respondent failed to advise Tran that the Court had dismissed *People v. Ricky Tran.*

9. Respondent took no further action on Tran's matter.

10. On August 15, 2013, Tran's wife, Daisy Tran, ("Mrs. Tran") contacted another attorney to find out the status of her husband's appeal. The attorney located the court docket in *People v. Ricky Tran* on the court's website, and saw that the appeal had been dismissed. The attorney notified Mrs. Tran of the dismissal and directed her to the court docket. Mrs. Tran also reviewed the court docket in *People v. Ricky Tran.*

11. On August 16, 2013, Mrs. Tran contacted the respondent. The respondent told Mrs. Tran that he would have to call her back. On August 19, 2013, respondent called Mrs. Tran back. At that time, Mrs. Tran asked respondent about the status of Tran's appeal. Respondent at first told Mrs. Tran that the case was ongoing and that the appeal process could take up to three years. Mrs. Tran then asked respondent whether the appeal was really still ongoing. At that point, respondent indicated that he had run into "some snags." Respondent then admitted that he had never filed the opening brief in *People v. Ricky Tran.*

CONCLUSIONS OF LAW:

12. By failing to comply with the December 14, 2012 Order to file his appellate brief on or before December 21, 2012 in *People v. Ricky Tran*, respondent failed to abide by a court order requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

13. By failing to file the opening brief in People *v. Ricky Tran*, respondent intentionally failed to perform with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

14. By failing to advise Tran of his failure to file an appellate brief and the Court's dismissal of *People v. Ricky Tran*, respondent failed to keep his client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

15. By failing to take any action on the client's behalf after he filed for an extension in which to file the opening brief on December 14, 2012, respondent constructively terminated his employment and thereafter failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client upon his termination, in wilful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

On January 18, 2007, respondent received a public reproval for failing to respond to the reasonable status inquiries of a client, in wilful violation of Business and Professions Code section 6068(m), and for failing to promptly refund unearned fees, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Dishonesty (Std. 1.5(d)):

Respondent demonstrated dishonesty when Mrs. Tran called him, by at first telling her that the appeal was ongoing and the appeal process can take up to three years, when in fact the matter had been dismissed.

Significant Harm (Std. 1.5(f)):

Respondent's client Tran suffered the dismissal of his appeal, due to respondent's failure to timely file the opening brief. The client hired new counsel and was able to set aside the dismissal. However, respondent's failure to notify Tran of the dismissal caused him a delay of eight months. There is significant harm when an incarcerated client suffers the dismissal of their case and is not informed of it.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent committed four acts of misconduct, and thereby committed multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Prefiling Stipulation: Respondent stipulated to this matter shortly after the State Bar filed the Notice of Disciplinary Charges. (*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].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 12, 2014, 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 <u>not</u> receive MCLE credit for completion of State Bar Ethics School to be ordered as a condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:	Case number(s):
JESSE SOTO ORTIZ III	13-O-17461

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.

Date	Signature	Print Name
9/22/14		JESSE SOTO ORTIZ III
	Respondent's Signature	Print Name
Date	Respondent's Counsel Signature	Print Name
9/24/2014		ROBIN B. BRUNE
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: JESSE SOTO ORTIZ III	Case number(s): 13-O-17461

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

02/19/15 Date	Respondent's Signature	JESSE SOTO ORTIZ III Print Name
Date	Respondent's Counsel Signature	Print Name
2/19/2015 Date	Deputy Trial Counsel's Signature	ROBIN B. BRUNE Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
JESSE SOTO ORTIZ III	13-O-17461

ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☒ 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Feb 19 2015
Date

LUCY ARMENDARIZ
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 February 19, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

☒ By personally delivering a copy of said document(s) to:

JESSE SOTO ORTIZ, III
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

ROBIN BRUNE
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 19, 2015.

Mazie Yip
Case Administrator
State Bar Court