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<b>State Bar Court of California Hearing Department Los Angeles REPROVAL</b>		
Counsel For The State Bar  <b>Jeremy Ibrahim</b> <b>Contract Attorney</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1252</b>  Bar # <b>261572</b>	Case Number(s): <b>14-C-02466-RAP</b>	For Court use only  <div style="text-align: center;"><b>FILED</b></div> <div style="text-align: center;"><b>SEP 15 2014</b> </div> <div style="text-align: center;"><b>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</b></div>
Counsel For Respondent  <b>Jessica A. Lienau</b> <b>Lewis Brisbois Bisgaard &amp; Smith LLP</b> <b>221 N. Figueroa St., Suite 1200</b> <b>Los Angeles, CA 90012</b> <b>(213) 680-5100</b>  Bar # <b>269753</b>	<b>PUBLIC MATTER</b>	
In the Matter of: <b>JOSE RENATO GARAY</b>  Bar # <b>200494</b>  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>PUBLIC REPROVAL</b>  <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 **March 1, 1999**.
- (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."



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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):
- 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. **See Attachment to Stipulation, at page 7**
- (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:**

#### **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 **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

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Professional Conduct, and all conditions of the reproof 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 reproof.
- (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 reproof.

No MPRE recommended. Reason: **The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. See In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 181.**

- (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:**

N/A



requested to see Respondent's hands, who then placed them behind his back and then waved them in an up and down motion, which prompted deputies to draw their pistol and point them at Respondent.

7. Upon seeing the pistols, Respondent dropped the cell phone in his hands, turned around, put his hands up, and stated that the officers may search him. When the deputy grabbed Respondent's right hand guiding it to the small of Respondent's back, Respondent became agitated and swung his left arm towards one of the deputies. The deputy ducked to avoid being hit, then lifted Respondent's right hand to the middle of Respondent's back and leaned him over a car to gain control of Respondent, which allowed other deputies to gain control over Respondent's hands and place handcuffs on him.

8. Respondent was then seated in the back of the patrol car whereupon Respondent began kicking the patrol car door, which prompted deputies to place Respondent in hobble restraints.

#### CONCLUSIONS OF LAW:

9. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

#### MITIGATING CIRCUMSTANCES.

**Good Character (Std. 1.6(f)):** Respondent has provided eleven declarations, executed under penalty of perjury from people attesting to his integrity, honesty, and professionalism. 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 misconduct. Each character reference acknowledged being aware of Respondent's misconduct, each was able to point to specific reasons for his or her high opinion of Respondent's moral character in spite of the misconduct, and stated that Respondent's conduct was an aberration.

#### ADDITIONAL MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent was admitted to the California Bar on March 1, 1999. Respondent has no prior record of discipline in his over 15 years of practice. Respondent is entitled to significant weight in mitigation. *Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596.

**Pretrial Stipulation:** Respondent has now acknowledged his misconduct and stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible, thereby avoiding the necessity of trial and saving the State Bar 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).)

The sanction applicable to Respondent’s misconduct is found in Standard 2.12(b), which states “[s]uspension or revocation is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline. In a criminal conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Ba Ct. Rptr. 502, 510.)

The Standards state that when mitigating circumstances are found and they demonstrate that a lesser sanction is needed to fulfill the primary purposes of discipline, “it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard.” (Standard 1.7(c).) Standard 1.7(c) continues, stating, “On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.”

In the instant case, deputies responded to Respondent’s house regarding a dispute between Respondent and his wife. Deputies contacted Respondent’s wife, and during that contact Respondent, yelling, approached the deputies with his cell phone in his hand. Deputies requested Respondent put down the cell phone. Respondent eventually complied and when deputies were trying to detain Respondent, he swung his arm almost striking one of the deputies. The deputies were required to use force to restrain the Respondent. Respondent was convicted of violating Penal Code § 148(a)(1). Here, Respondent’s misconduct did not relate to the practice of law but is sufficient to warrant discipline.

Discipline in the instant matter is supported by case law. In *In re Kelley* (1990) 52 Cal. 3d 487, the respondent was convicted of two misdemeanor DUI’s, which are not crimes of moral turpitude. The California Supreme Court concluded that only relatively minimal discipline was warranted for a member who had two DUI’s. In *Kelley*, the court ordered discipline consisting of a public reproof with a three year probationary period.

The severity of Respondent's misconduct is similar to the misconduct in *Kelley* in that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude. Respondent's misdemeanor conviction is low-level and less severe than a second DUI conviction. Additionally, Respondent's misconduct is mitigated by his long period of discipline-free practice. Unlike *Kelley*, this appears to be Respondent's first criminal conviction. However, the discipline system is responsible for preserving the integrity of the legal profession as well as public protection. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 416.) Here, Respondent's aggression toward law enforcement exhibited disrespect for authority, warranting public discipline.

Based on the nature and extent of the misconduct on balance with the mitigating factors present, a public reproof is sufficient to serve the purposes of attorney discipline, is supported by case law as the appropriate discipline, and consistent with the purposes of discipline expressed in Standard 2.12(b).

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 1, 2014, the prosecution costs in this matter are \$2,447. 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**

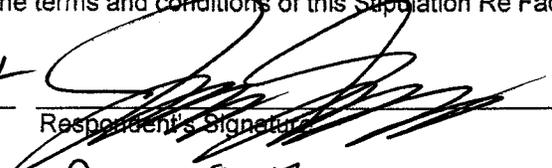
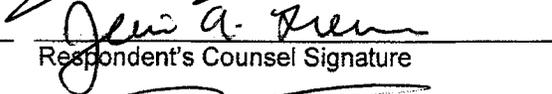
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School as a condition of his reproof. (Rules Proc. of State Bar, rule 3201.)

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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>8/22/14</u> Date	 Respondent's Signature	<u>Jose Renato Garay</u> Print Name
<u>8/26/14</u> Date	 Respondent's Counsel Signature	<u>Jessica A Lienau</u> Print Name
<u>8-26-14</u> Date	 Deputy Trial Counsel's Signature	<u>Jeremy Ibrahim</u> Print Name

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In the Matter of: JOSE RENATO GARAY	Case Number(s): 14-C-02466-RAP
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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 reproof, 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

SEPTEMBER 12, 2014  
Date

  
\_\_\_\_\_  
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 Los Angeles, on September 15, 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 Los Angeles, California, addressed as follows:

JESSICA A. LIENAU  
LEWIS, BRISBOIS, BISGAARD & SMITH LLP  
221 N FIGUEROA ST  
SUITE 1200  
LOS ANGELES, CA 90012

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

JEREMY IBRAHIM, Enforcement, Los Angeles

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

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court