

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
Counsel For The State Bar  <b>Diane J. Meyers</b> Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1496  Bar # 146643	Case Number(s): 14-O-01379-LMA 14-O-02766 (inv.) 14-O-03650 (inv.)	For Court use only  <p style="text-align: center; font-size: 1.2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center; font-size: 1.2em;">DEC 23 2014</p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
In Pro Per Respondent  <b>Kenneth E. Ostrove</b> 5200 Lankershim Blvd., Ste. 850 North Hollywood, CA 91601-3155 (818) 505-9532  Bar # 111222	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of:  <b>KENNETH EDWARD OSTROVE</b>  Bar # 111222  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 21, 1983**.
- (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 **20** 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."



(Do not write above this line.)

- (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: **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 Stipulation Attachment at p. 16.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See Stipulation Attachment at p. 16.**

(Do not write above this line.)

---

- (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. **Stipulation Attachment at p. 16.**
- (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.

(Do not write above this line.)

---

- (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:**

**No prior record of discipline, family problems, pretrial and prefiling Stipulation, and good character.**  
(See Stipulation Attachment at pp. 16-17.)

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of **one 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 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 **90 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.

(Do not write above this line.)

- (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 checked="" type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" 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**

(Do not write above this line.)

---

**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:**

(Do not write above this line.)

In the Matter of: <b>Kenneth Edward Ostrove</b>	Case Number(s): <b>14-O-01379, 14-O-02766. and 14-O-03650</b>
--	--

### Medical Conditions

- a.  Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b.  Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **one time** per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~days~~ *days* / ~~months~~ *months* / ~~years~~ *years* or the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c.  Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

(Do not write above this line.)

In the Matter of: <b>Kenneth Edward Ostrove</b>	Case Number(s): <b>14-O-01379, 14-O-02766. and 14-O-03650</b>
--	--

**Law Office Management Conditions**

- a.  Within **30 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:



(Do not write above this line.)

In the Matter of: <b>Kenneth Edward Ostrove</b>	Case Number(s): <b>14-O-01379, 14-O-02766. and 14-O-03650</b>
--	--

### Financial Conditions

#### a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Sherry Van Dyk	\$1,077.50	February 10, 2014
April Farael	\$865	March 23, 2014

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **30 days after the effective date of the discipline as to Sherry Van Dyk. As for April Farael, if restitution of \$865 is not paid by December 31, 2014, then respondent must pay the above-referenced restitution to Farael, and provide satisfactory proof of payment to the Office of Probation not later than 30 days after the effective date of discipline.**

#### b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

#### c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                               KENNETH EDWARD OSTROVE

CASE NUMBERS:                                 14-O-01379, 14-O-02766, 14-O-03650

**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. 14-O-01379 (Complainant: Deborah Callahan)

FACTS:

1. On or about August 28, 2007, Deborah Callahan ("Callahan") employed respondent to probate her late brother's estate, the Estate of Nolan Callahan, and gave respondent an \$800 check as advanced costs for the probate.
  
2. On August 28, 2007, respondent initiated the probate by filing a petition for probate and letters of administration on behalf of Callahan in the Los Angeles County Superior Court, *Estate of Nolan Callahan*, case no. BP106384.
  
3. On October 10, 2007, the court issued an order appointing Callahan as the administrator of the estate; on August 19, 2008, respondent filed an inventory and appraisal; on December 16, 2008, respondent filed a status report regarding the administration of the estate; and on January 28, 2009, the court granted the status report of the administrator in case no. BP106384. Respondent filed no other documents in case no. BP106384 on behalf of Callahan.
  
4. On January 28, 2010 and March 27, 2010, Callahan faxed documents needed to close the probate to respondent.
  
5. On May 28, 2010, Callahan contacted respondent by fax inquiring about the closure of the probate. Respondent did not respond to Callahan's fax.
  
6. On August 23, 2010, Callahan sent respondent her final accounting so that he could close the probate; and on September 6, 2010, Callahan sent respondent additional documents so that he could close the probate. Respondent ceased working on the probate between October 2010 and April 2013 approximately due to personal problems he was experiencing at the time.
  
7. In or about May 2013, respondent told Callahan that he would send her a final draft of the documents needed to close the estate for her signature. Respondent did not send any documents to Callahan to close the estate.

8. On June 18, 2013, Callahan sent a letter to respondent, via certified mail, in which she requested that respondent close the estate and that respondent contact her. Respondent did not close the estate or contact Callahan as requested.

9. In January 2014, Callahan submitted her State Bar complaint against respondent and on February 7, 2014, the State Bar of California ("State Bar") sent a letter to respondent regarding Callahan's complaint. On February 24, 2014, respondent faxed his response regarding Callahan's complaint to the State Bar.

10. As of March 28, 2014, respondent had not contacted Callahan to discuss closure of the estate. On March 28, 2014, after being contacted by the State Bar's investigator regarding Callahan's complaint, respondent emailed Callahan and apologized for his delay in finalizing the probate and offered to complete the probate for Callahan.

11. On April 3, 2014, respondent acknowledged to the State Bar's investigator during a telephone conversation that he had been in contact with Callahan recently and that she told him that she wanted him to finish the probate. Respondent told Callahan to provide updated information and then he would file the documents needed to finalize the probate.

12. In or about late April 2014, Callahan sent respondent a letter with the information regarding closing the probate.

13. On June 4, 13, and 25, 2014, Callahan called respondent for the status of the probate, but received no response from respondent.

14. On June 12, 2014, the State Bar sent a letter to respondent regarding Callahan's complaint and asked respondent to provide the status of the probate. Respondent did not respond to the State Bar's letter.

15. To date, respondent has not finalized the probate or closed the estate.

16. Respondent has agreed to forego any attorney fees to alleviate the financial harm caused to the estate by respondent's misconduct (including storage fees incurred for the decedent's personal belongings and property taxes paid for decedent's real property) and to finalize the probate for Callahan.

#### CONCLUSIONS OF LAW:

17. By not finalizing the probate after Callahan provided information to respondent in 2010 and after respondent subsequently informed Callahan that he would finalize the probate, respondent failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By not responding to Callahan's May 2010 fax, June 2013 letter and June 2014 calls, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

19. By not informing Callahan that respondent would not be working on the probate between October 2010 and April 2013 approximately, respondent failed to keep Callahan reasonably informed of

a significant development in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Case No. 14-O-02766 (Complainant Sherry Van Dyk)

FACTS:

20. In or about December 2012, Sherry Van Dyk ("Van Dyk") employed respondent to perform legal services, namely to recover her furniture that was in the possession of her fiancé, Emile Beaucard Maghsadi, before he died in August 2012 and to pursue claims to her fiance's assets, including filing a creditor's claim on behalf of Van Dyk in the probate of his estate once the probate was initiated. Van Dyk advanced \$2,800 to respondent as fees.

21. Respondent performed legal services for Van Dyk by meeting with her, reviewing documents received from Van Dyk, conducting internet searches for the decedent's assets, having telephone contact with the decedent's brother and his attorney, and conducting research regarding the possibility of filing a claim against the estate or initiating a probate as a creditor.

22. Throughout 2013, Van Dyk called respondent periodically for the status of her case. Respondent did not provide the status to Van Dyk.

23. In January 2014, Van Dyk went to respondent's office to discuss the status of the case, as she had not heard from respondent about the matter. Respondent indicated that he would send a letter to the attorney for the estate yet to be identified and provide status updates.

24. After the January 2014 meeting, Van Dyk started calling respondent about two to three times per week. Van Dyk's calls were answered by respondent's voice mail and Van Dyk left messages for respondent to return her calls and her money. Van Dyk did not receive a return call or a refund from respondent.

25. On February 10, 2014, Van Dyk sent a certified letter to respondent in which she terminated respondent's employment and requested a refund of the \$2,800 advanced fee. Respondent did not provide any accounting or refund to Van Dyk.

26. In April 2014, Van Dyk submitted a complaint against respondent to the State Bar of California.

27. On May 27, 2014, the State Bar's investigator sent a letter to respondent requesting that he provide a written response to Van Dyk's complaint by June 10, 2014. Respondent did not provide his written response to the State Bar.

28. On June 17, 2014, the State Bar's investigator sent another letter to respondent requesting that he provide a written response to Van Dyk's complaint by July 1, 2014. Respondent did not provide his written response to the State Bar regarding Van Dyk's complaint until October 12, 2014, during a settlement conference held in connection with case no. 14-O-01379.

29. On December 5, 2014, Respondent provided an accounting for the \$2,800 to the State Bar demonstrating that \$1,722.50 had been earned by respondent and that a refund of \$1,077.50 was due to Van Dyk. To date, respondent has not returned \$1,077.50 to Van Dyk.

## CONCLUSIONS OF LAW:

30. By not responding to Van Dyk's calls in 2013 and 2014, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

31. By not providing an accounting for the \$2,800 advanced fee to Van Dyk, respondent failed to account to a client for advanced fees upon termination of respondent's employment, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

32. By not providing a substantive written response to the State Bar's letters of May 27 and June 17, 2014 until October 12, 2014, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code, section 6068(i).

33. By not returning \$1,077.50 to Van Dyk, respondent failed to promptly refund any part of a fee paid in advance that had not been earned, in willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

### Case No. 14-O-03650 (Complainant: April Farael)

## FACTS:

34. On May 7, 2013, April Farael ("Farael") employed respondent to probate her father's estate. On May 7, 2013, Farael paid respondent \$1,500 as advanced costs for the probate, which respondent did not deposit into his client trust account. On June 10, 2013, respondent filed a probate petition on behalf of Farael, *Estate of Vital Momy*, Los Angeles County Superior Court case no. BP142188. On June 13, 2013, respondent filed an ex parte application for letters of special administration seeking Farael's appointment as administrator which was granted. The court required that a \$31,000 bond be filed with the court before the court issued letters of special administration. The letters of special administration, if issued, were to expire on July 10, 2013. Respondent communicated the outcome of the ex parte hearing to Farael. Respondent did not file the bond.

35. On July 10, 2013, another hearing was held in the probate case. The letters of administration were granted, but the court did not approve a request in the petition to waive a bond. Farael was required to post a \$150,000 bond before the letters of administration could be issued. The court directed respondent to prepare a written order and set the deadline to file either a petition for final distribution or a status report on January 9, 2015 and set a hearing on an order to show cause regarding an accounting and/or the status of the distribution for February 6, 2015. Respondent did not submit a written order appointing Farael as the administrator for the estate and did not file any other document in the probate on behalf of Farael.

36. Between July 2013 and January 2014 approximately, Farael repeatedly called respondent and left messages asking for the status of the probate. During this time, Farael's sister also called and emailed respondent asking for the status of the probate on behalf of Farael. Respondent did not return all of Farael's calls or sufficiently communicate the status of the probate to Farael.

37. On January 9, 2014, Farael emailed respondent complaining that he had not responded to status inquiries by Farael and her family during the past few months and she had been unable to reach respondent by email or by telephone.

38. On January 10, 2014, Farael informed respondent in an email that she intended to complain against respondent to the State Bar of California if she did not hear from respondent. On January 11, 2014, respondent replied to Farael's email. Respondent apologized for the delay and stated to Farael that he had been ill and had problems with his computer. Respondent requested Farael's sister to sign a bonding company form, since Farael did not have sufficient assets to support a bond, which her sister signed and returned to respondent on January 15, 2014. Thereafter, Farael did not hear from respondent about the status of the probate.

39. On March 4, 2014, Farael emailed her request to respondent for the status of the probate. Respondent did not respond to Farael's inquiry.

40. On March 23, 2014, Farael sent a letter to respondent terminating his employment and requesting a refund of the \$1,500 in advanced costs so she could hire another attorney. Respondent did not provide an accounting to Farael or a refund of unused costs.

41. On December 3, 2014, respondent provided an accounting of the \$1,500 advanced costs to the State Bar. Prior to this date, respondent mistakenly believed that the actual expenses incurred in Farael's matter exceeded \$1,500, but determined that he had incurred \$635 in costs and a balance of \$865 was due to Farael.

42. To date, respondent has not returned the unused costs to Farael, but has agreed to return the unused costs to Farael by December 31, 2014.

#### CONCLUSIONS OF LAW:

43. By not filing a bond, by not submitting a written order appointing Farael as the administrator for the estate and by not filing any other document in the probate on behalf of Farael, respondent failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

44. By not responding to Farael's calls between July 2013 and January 2014 and March 4, 2014 email, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

45. By not providing an accounting for the \$1,500 advanced costs received from Farael until December 3, 2014, respondent failed to account to a client for advanced fees upon termination of respondent's employment, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

46. By not returning \$865 in unused costs to Farael, respondent failed to pay promptly as requested by a client, any portion of the \$1,500 in advanced costs in respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

47. By not depositing the \$1,500 advanced costs into a client trust account, respondent failed to deposit funds received for the benefit of the client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of Rules of Professional Conduct, rule

4-100(A).

### **AGGRAVATING CIRCUMSTANCES.**

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

Respondent failed to perform and account in two client matters, failed to communicate in three client matters, failed to promptly return unused costs, failed to deposit advanced costs into a trust account, and failed to cooperate in one State Bar investigation.

#### **Harm (1.5(f)):**

Respondent's delay in finalizing the probate for Callahan led to the estate incurring expenses for storing the decedent's personal belongings and property taxes for decedent's real property.

#### **Indifference (Std. 1.5(g)):**

While respondent apologized to Callahan in March 2014 for respondent's delay in finalizing the probate, respondent demonstrated indifference by not finalizing the probate for Callahan after respondent repeatedly represented to Callahan that he would finalize the probate and after he apologized for not doing so. Respondent's indifference is tempered by his agreement of finalize the probate for Callahan and waiving any entitlement to attorney fees to alleviate any financial harm caused to the estate because of his misconduct. Respondent also demonstrated indifference to Farael by not taking action in her mother's probate after he apologized to Farael in January 2014 for his delay in the matter.

### **MITIGATING CIRCUMSTANCES.**

#### **Additional Mitigating Circumstances:**

No prior record of discipline.

Although respondent's misconduct is serious, he was admitted to the State Bar on December 21, 1983 and has no prior record of discipline in over 30 years of practice. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225 [in excess of 30 years in practice without prior discipline considered an important mitigating factor].)

#### **Family Problems:**

Respondent was suffering from stress and anxiety caused by personal problems around the time of his misconduct for which he voluntarily consulted with a therapist and a psychiatrist in 2010 and 2011. Beginning in 2010, respondent, a solo practitioner, was absent from work for lengthy periods of time to take care of his wife due to her illness and his family. Respondent's personal problems led to financial losses and marital problems for which therapy was received on a weekly basis from May 2011 to September 2011. Respondent's wife filed for dissolution in September 2012. Around October 2012, respondent spent additional time away from his office to take care of his children. The dissolution was contested and a judgment was entered in December 2013, but certain issues remained unresolved. Respondent has to pay a significant portion of his income to his ex-wife which has negatively impacted his finances. Respondent had weekly therapy sessions from June 2011 to December 2013, but had to



stop the sessions for financial reasons. Respondent's current psychiatrist established a nexus between his mental health and personal problems and his misconduct. His psychiatrist confirmed that respondent developed symptoms of depression and anxiety that affected his functional level during the dissolution for which respondent received treatment beginning in October 2013 and that respondent has been compliant with his treatment. (*In re Naney* (1990) 51 Cal.3d 186, 197 [emotional problems resulting from marital problems and similar difficulties entitled to mitigation if extreme and directly responsible for misconduct]; *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 614, 619 [family problems suffered by attorney including marital dissolution given mitigation credit]; *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [mitigation given for difficulties/disabilities in the absence of complete rehabilitation finding that steady progress towards rehabilitation had been shown].)

#### Pretrial and prefilng Stipulation:

While respondent failed to cooperate in the State Bar's investigation of Van Dyk's complaint, case no. 14-O-02766, in case no. 14-O-01379, respondent has stipulated to facts and culpability prior to trial, and in case nos. 14-O-02766 and 14-O-03650, respondent has stipulated to facts and culpability prior to the filing of formal charges, and thereby saved State Bar resources and time. (*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].)

#### Good character:

Respondent has engaged in charitable activity. For the past 10 years, respondent has performed community service for the Temple Israel of Hollywood which hosts an annual Christmas dinner for 900 homeless and low income people. The people are fed and given blankets, clothing, toiletries and toys. Respondent donated his time and services in organizing the event. Respondent has acted as the chairperson of the event for five of the 10 years. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 and *Porter v. State Bar* (1990) 52 Cal.3d 518, 529 [civic service and charitable work as evidence of good character and mitigation].)

#### **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 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.) 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 12 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.”

The most severe sanctions applicable to respondent’s misconduct are found in Standards 2.2(a) and 2.5(b), which apply to respondent’s violations of Rules of Professional Conduct, rule 4-100(B)(4), and rule 3-110(A) and Business and Professions Code section 6068(i), respectively.

Standard 2.2(a) provides that an actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds. Standard 2.5(b) provides that actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.

Respondent’s misconduct occurred at a time when he was experiencing family and marital problems and was out of character given respondent’s decades in practice without prior discipline, which is a significant mitigating factor. Respondent voluntarily sought counseling to deal with his stress and anxiety caused by his personal problems and has entered into stipulations to save State Bar resources. Yet respondent failed to rectify his misconduct by taking steps to finalize the estate for Callahan, but is preparing to do so and is foregoing his attorney fees in light of the financial harm caused to the decedent’s estate. His failure to deposit Farael’s advanced costs in his trust account and failure to promptly pay out the unused portion of the costs to Farael was not venal or dishonest.

A 90-day actual suspension, a one-year stayed suspension and a two-year probation with educational requirements of State Bar Ethics School and the Multistate Professional Responsibility Examination coupled with the formulation of a law office management plan will serve to protect the public and remind respondent of his ethical obligations. This recommendation is consistent with the applicable standards and Supreme Court case law. (*Matthew v. State Bar* (1989) 49 Cal.3d 784 [60-day suspension for failure to perform competently, communicate and return unearned fee involving three clients; aggravated by financial harm and mitigated by no priors in three years of practice]; *King v. State Bar* (1990) 52 Cal.3d 307 [90-day suspension for failure to perform competently, failure to return files, and misrepresentation involving two client matters, aggravated by financial and emotional client harm and failure to pay restitution, and mitigated by no prior discipline in 17 years of practice, financial problems and depression].)

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 1, 2014, the prosecution costs in this matter are \$13,236. 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**

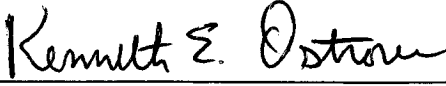
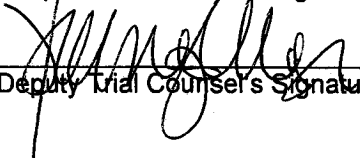
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational courses to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case number(s): 14-O-01379, 14-O-02766. and 14-O-03650
---	---

**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>12/8/14</u> Date	 Respondent's Signature	Kenneth E. Ostrove Print Name
Date	Respondent's Counsel Signature	Print Name
<u>12/8/14</u> Date	 Deputy Trial Counsel's Signature	Diane J. Meyers Print Name

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case Number(s): 14-O-01379, 14-O-02766. and 14-O-03650
---	---

### 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 12-22-14

  
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 San Francisco, on December 23, 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:

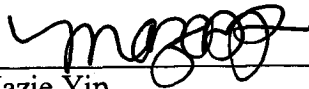
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KENNETH EDWARD OSTROVE  
LAW OFC KENNETH E OSTROVE  
5200 LANKERSHIM BLVD STE 850  
NORTH HOLLYWOOD, CA 91601 - 3155

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

DIANE J. MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 23, 2014.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court