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State Bar Court of California Hearing Department Los Angeles DISBARMENT		
Counsel For The State Bar Murray B. Greenberg Supervising Senior Trial Counsel The State Bar of California 845 S. Figueroa St. Los Angeles, CA 90017 (213)765-1258 Bar # 142678	Case Number(s): 14-O-4941	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED OCT 28 2014 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Kevin Gerry 433 N. Camden Dr., 4th Fl. Beverly Hills, CA 90210 (310)275-1620 Bar # 129690	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Roger Jay Rosen Bar # 48573 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:

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- (1) Respondent is a member of the State Bar of California, admitted **January 7, 1971**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (9) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (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 to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See Attachment, page 7.**
- (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 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 subsequent rehabilitation.

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(13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances:

Pre-filing stipulation. See Attachment, page 7.
No prior discipline. See Attachment, page 7.

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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..
- (2) ☐ **Restitution:** Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROGER JAY ROSEN

CASE NUMBER: 14-O-4941

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specific statutes.

Case No. 14-O-4941 (State Bar Investigation)

FACTS:

1. In or about and between December 2009 and December 2010, within the Eastern District of New York and elsewhere, respondent, together with others, did knowingly and intentionally conspire to: (i) use intimidation, threaten and corruptly persuade, and engage in misleading conduct toward, another person, to wit: John Doe, a client of respondent whose identity is known to the United States Attorney, with intent to (a) influence, delay and prevent the testimony of John Doe in one or more official proceedings, to wit: proceedings before a judge and court of the United States and a federal grand jury in the Eastern District of New York, and (b) hinder, delay and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a federal offense, to wit: cocaine distribution and (ii) corruptly obstruct, influence and impede such official proceedings.

2. On or about December 16, 2010, within the Eastern District of New York and elsewhere, respondent, together with others, did knowingly and intentionally: (i) attempt to use intimidation, threaten and corruptly persuade, and engage in misleading conduct toward, another person, to wit: John Doe, with intent to (a) influence, delay and prevent the testimony of John Doe in one or more official proceedings, to wit: proceedings before a judge and court of the United States and a federal grand jury in the Eastern District of New York, and (b) hinder, delay and prevent the communication to a law enforcement officer of the United States of information relating to the commission and possible commission of a federal offense, to wit: cocaine distribution and (ii) corruptly obstruct, influence and impede such official proceedings, and attempt to do so.

3. On or about December 16, 2010, within the Eastern District of New York and elsewhere, respondent, together with others, did knowingly and intentionally and corruptly endeavor to influence, obstruct and impede the due administration of justice, to wit: by disclosing confidential information regarding John Doe.

4. The above acts were charged in an Information, Docket Number 13-CR-450, in which respondent stipulated that he was criminally culpable for Obstruction of Justice for violations of Title 18, United States Code, Sections 1503(a) [Influencing Juror], 1512(b)(1), 1512(b)(3) and 1512(c)(2) [Tampering With a Witness].

5. On or about July 31, 2013, Respondent stipulated in a Statement of Facts that was incorporated by reference as part of a Deferred Prosecution Agreement in Docket Number 13-CR-450 with the United States Attorney's Office for the Eastern District of New York. Part of the Agreement states that if respondent is in compliance with all of the obligations under the Agreement for an 18-month period, the United States Attorney's Office will move the Court for a dismissal of the Information without prejudice. It also indicates that respondent has acknowledged his guilt as on or about December 16, 2010, respondent participated in a conspiracy to obstruct justice and obstructed justice by, among other things, passing the confidential proffer notes of one of his clients to members of a drug organization about whom the client was providing information to law enforcement. In passing these confidential notes, respondent was aware of a high probability that the information that the client was cooperating with law enforcement would be used by the drug organization's members to attempt to prevent the client from further communication with law enforcement and to obstruct the investigation into, and pending and future proceedings involving, the drug organization. Respondent deliberately closed his eyes to that possibility.

CONCLUSIONS OF LAW:

6. By participating in a conspiracy to obstruct justice and obstructing justice, respondent committed an act or acts involving moral turpitude, dishonest or corruption in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)):

Respondent's misconduct caused significant harm to the administration of justice by disclosing confidential information of a client and otherwise engaging in a conspiracy to obstruct a law enforcement investigation into a drug organization.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No Prior Discipline: Although respondent's misconduct is serious, he is entitled to mitigation for having practiced law for approximately 40 years without discipline. (In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Pre-filing Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to filing of charges, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigating 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).)

Standard 2.7 states: “Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.” In this matter, respondent admits to acts of moral turpitude for his actions involving conspiracy to obstruct justice and obstruction of justice that were related to the practice of law. Respondent’s lack of prior discipline over many years of practice and willingness to stipulate to facts and culpability, does not establish compelling mitigation sufficient to support discipline less than disbarment. “[D]isbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude....” (*In re Crooks* (1990) 51 Cal.3d 1090, 1101.) Disbarment is necessary to protect the public, the courts and the legal profession, to maintain the highest professional standards, and to present public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.



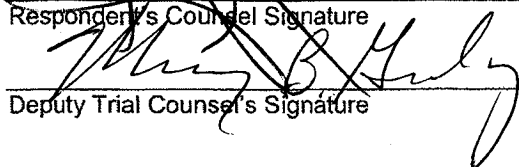
Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of September 19, 2014, the prosecution costs in this matter are \$2,992. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: ROGER JAY ROSEN	Case number(s): 14-O-4941
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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>10-10-14</u> Date	 Respondent's Signature	<u>Roger Jay Rosen</u> Print Name
<u>10-20-14</u> Date	 Respondent's Counsel Signature	<u>Kevin Gerry</u> Print Name
<u>10/21/14</u> Date	 Deputy Trial Counsel's Signature	<u>Murray B. Greenberg</u> Print Name

(Do not write above this line.)

In the Matter of: ROGER JAY ROSEN	Case Number(s): 14-O-04941
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DISBARMENT 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.)**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

10/28/14



Judge of the State Bar Court
DONALD F. MILES

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 28, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

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

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

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

MURRAY GREENBERG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 28, 2014.



Rose M. Luthi
Case Administrator
State Bar Court