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State Bar Court of California
Hearing Department CONFIDENTIAL

REPROVAL

Counsel For The State Bar	Case Number(s):	For Court use only
R. Kevin Bucher **Deputy Trial Counsel** **845 S. Figueroa Street** **Los Angeles, CA 90017-2515** **(213) 765-1630** Bar # **132003**	**14-O-02443; 15-O-12308**	FILED APR 15 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent **Susan L. Margolis** **2000 Riverside Drive** **Los Angeles, CA 90039-3758** **(323) 953-8996** Bar # **104629**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: **JOHN RICHARD CONTOS** Bar # **56782** A Member of the State Bar of California (Respondent)	**PRIVATE REPROVAL** ☐ 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 **December 20, 1973**.

(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 **11** 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 are added to membership fee for calendar year following effective date of discipline (public reproval).
☒ Case ineligible for costs (private reproval).
☐ 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 reproval 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 reproval 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 reproval 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 reproval 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(h) & 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".

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

(7) ☐ **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.

(8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 8.

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☐ **Restitution:** Respondent failed to make restitution.

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur. **See attachment, page 8.**

(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 or to the State Bar during disciplinary investigations and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Civic Service and Charitable Work - See attachment, page 8
Extreme Emotional/Personal Difficulties - See attachment, page 9
Pre-filing Stipulation - See attachment, page 9

D. Discipline:

(1) ☒ **Private reproval (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 reproval (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

(1) ☒ Respondent must comply with the conditions attached to the reproval for a period of **one year**.

(2) ☒ During the condition period attached to the reproval, 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 reproval. 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 the reproval 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 reproval.

(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 reproval.

☐ No MPRE recommended. Reason: .

(11) ☐ The following conditions are attached hereto and incorporated:

(Do not write above this line.)

- ☐ Substance Abuse Conditions
- ☐ Law Office Management Conditions
- ☐ Medical Conditions
- ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN RICHARD CONTOS

CASE NUMBER: 14-O-02443; 15-O-12308

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-02443 (Complainant: Alicia Cole)

FACTS:

1. In October 2007, Respondent was retained to represent a client in a medical malpractice action. On November 13, 2007, Respondent filed a civil action on Cole's behalf. The case ultimately settled and was dismissed on June 13, 2012.

2. Following settlement of the case, the client retained new counsel on June 13, 2013, to assist her in resolving a Medicare lien so the settlement proceeds could be processed and distributed.

3. Prior to retaining new counsel, during the course of Respondent's representation, Respondent's client requested a copy of her file from Respondent on at least 20 occasions between October 21, 2008 and December 15, 2011. On October 1, 2013, and again on October 30, 2013, his client's new counsel sent letters to Respondent requesting the release of all files related to the Cole litigation.

4. On December 20, 2013, Respondent returned four boxes of materials and documents to his client's new counsel. However, the boxes did not contain key portions of pleadings files, correspondence files and other key portions of the file related to the litigation.

CONCLUSIONS OF LAW:

5. By failing to promptly release all relevant file materials to his client following Respondent's termination of employment, Respondent failed to promptly release to the client, at the request of the client, all the client's papers and property, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

Case No. 15-O-12308 (Complainant: Diane Goldman)

FACTS:

6. On September 17, 2007, Respondent was hired to represent a minor in a personal injury matter. Respondent was retained on a contingency fee basis to file a lawsuit and an insurance claim against the owners of the home where the injury occurred.

7. Respondent delayed filing a lawsuit on behalf of his client until January 3, 2014 three days before the statute of limitations expired on his client's personal injury claim. Thereafter, Respondent took no further action on his client's behalf.

8. In May 2015 his client retained new counsel and Respondent was removed from the case.

9. During the course of Respondent's representation, his minor client's mother requested a copy of her son's records on at least 14 occasions throughout 2013, 2014 and 2015. The records were again requested by his client's new attorney Diane Goldman, after Respondent was removed from the case.

10. Respondent provided a set of his client's records to the new attorney on or around May 26, 2015. The attorney subsequently reviewed the documentation that Respondent provided to her and discovered that it was incomplete.

11. After Respondent was removed as counsel of record, the civil case was settled.

CONCLUSIONS OF LAW:

12. By failing to promptly release all relevant file materials to his client following Respondent's termination of employment, Respondent failed to promptly release to the client, at the request of the client, all the client's papers and property, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

13. By failing to perform any work on his client's behalf for over one year following the filing of a civil complaint, Respondent, intentionally, recklessly or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondents failure to perform, along with his failure to promptly return the client files, demonstrates multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Discipline – (Std. 1.6(a)) -Respondent's 41 years of discipline-free practice, coupled with the present misconduct which is not likely to recur, is entitled to significant weight in mitigation.

Civic Service and Charitable Work – Over the course of his 43 years of practice, Respondent has served on many bar organizations and volunteered for professional and community projects. He has given MCLE presentations on trial technique and advocacy for the Los Angeles Bar and, in more recent years, for the Ventura County Bar. He continues to present programs to the Ventura County Bar Association. He is counsel to the Ventura County Bar Association, and is on the Board of the American Inns of Court. He has provided pro bono reviews of potential cases in Ventura County. For several years starting in the late 1990's, he was asked by the Presiding Judge to serve as a mediator for complex cases in the Superior Court. He also serves as a Special Master in Los Angeles, Ventura, and Santa Barbara Counties. Respondent served as a coach for the Constitutional Rights Foundation during a 10-year stretch in the 1990's, focusing on schools in depressed parts of the San Fernando Valley. He was also invited for 5 years straight to judge the Moot Court competition at Loyola University, and in the

past five years, he has coached the trial advocacy teams at USC. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar ct. Rptr. 335; *Porter v. State Bar* (1990) 52 Cal.3d 518 [civic service and charitable work can be mitigation as evidence of good character].)

Extreme Emotional/Personal Difficulties – In both of the underlying client matters Respondent was retained in 2007. The alleged misconduct did not occur for several years thereafter, on the heels of the break-up of his law firm, which was an emotional struggle unraveling 30 years of partnership and 45 years of friendship with his former partner. During the same time period, Respondent also experienced catastrophic personal financial losses, due to the breakup of his law office, and the unforeseen downturn of the economy, that depleted his retirement savings, causing further financial and personal stress. The re-organization of his business and economic losses, along with the emotional turmoil related thereto, was at least partially related to the misconduct. (See *In the Matter of Spaith* (1990) 3 Cal. State Bar Ct. Rptr. 511 [marital problems and similar difficulties can be mitigating if they are extreme and are directly responsible for the misconduct].)

Pre-filing Stipulation - Respondent entered into the present stipulation prior to filing of formal charges, saving valuable State Bar resources. (Silva-Vidor v. State Bar (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

The most severe sanction applicable to respondent's misconduct is found in Standard 2.7(c), which applies to Respondent's failure to perform. Standard 2.7(c) provides "[s]uspension or reproval is the presumed level of discipline for performance, communication, or withdrawal violations, which are

limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the clients." Standard 2.19 applies to the failures to return client files, and provides "[s]uspension not to exceed three years or reproval is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in the Standards."

In the present matter, Respondent's misconduct was limited in scope but the failure to perform, which resulted in his removal as counsel of record, lasted for a period of over one year. His failure to return client files arguably occurred over the course of a year or more, during the same time period in both cases, and when the files were returned they were incomplete. Nonetheless, both matters settled and there is no evidence of actual harm to the client arising from the misconduct. Respondent's good character and 41 years of discipline free practice make it unlikely that similar misconduct will occur in the future. Further, the breakup of Respondent's long-standing law partnership is behind him, and the disorganization and emotional turmoil related thereto have resolved. Mitigating circumstances greatly outweigh the single aggravating factor of multiple acts of misconduct. Accordingly, discipline on the low end of the range provided by the Standards is appropriate. A private reproval, with probationary conditions for a period of one year, and with the condition that Respondent attend a session of State Bar Ethics School and pass the test given at the end, will serve the purposes of protecting the public, the courts, and the legal profession.

EXCLUSION FROM MCLE CREDIT

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

(Do not write above this line.)

In the Matter of **JOHN RICHARD CONTOS**	Case number(s): **14-O-02443; 15-O-12308**

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 Fact, Conclusions of Law and Disposition.

4/4/2016 Date	Respondent's Signature	JOHN RICHARD CONTOS Print Name
April 6, 2016 Date	Respondent's Counsel Signature	SUSAN L. MARGOLIS Print Name
4-11-16 Date	Deputy Trial Counsel's Signature	R. KEVIN BUCHER Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
JOHN RICHARD CONTOS	14-O-02443; 15-O-12308

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

April 15, 2016
Date

W. Kearse McGill
W. KEARSE MCGILL
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 April 15, 2016, 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:

SUSAN LYNN MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Ronald K. Bucher, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 15, 2016.

Julieta E. Gonzales

Julieta E. Gonzales
Case Administrator
State Bar Court