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<p align="center"><b>State Bar Court of California</b>  <b>Hearing Department</b>  <b>Los Angeles</b>  <b>ACTUAL SUSPENSION</b></p>		
<p>Counsel For The State Bar</p> <p><b>Drew Massey</b>  <b>Deputy Trial Counsel</b>  <b>845 South Figueroa Street</b>  <b>Los Angeles, CA 90017-2525</b>  <b>Tel: (213) 765-1204</b></p> <p>Bar # <b>244350</b></p>	<p>Case Number(s):  <b>15-J-10070</b></p>	<p>For Court use only</p> <p align="center"><b>FILED</b>  <b>APR 10 2015</b> <i>P.B.</i>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b></p>
<p>In Pro Per Respondent</p> <p><b>Oleh Tustaniwsky</b>  <b>2066 E. 15<sup>th</sup> Street, Apt. 3C</b>  <b>Brooklyn, NY 11229</b>  <b>Tel: (347) 451-1512</b></p> <p>Bar # <b>123975</b></p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND  DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of:  <b>OLEH R. TUSTANIWSKY</b></p> <p>Bar # <b>123975</b></p> <p>A Member of the State Bar of California  (Respondent)</p>		

**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 **August 14, 1986**.
- (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 **14** 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):
- ☒ 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: (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.
- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See attachment, page 10.**
- (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.

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- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See attachment, page 10.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No record of prior discipline and prefiling stipulation. See attachment, page 10.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **four (4) years**.

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 **four (4) 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 **two (2) years**.

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.

(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: **Respondent is a resident of New York. As per agreement by the parties, in lieu of Ethics School, see "Other Conditions Negotiated by the Parties" in section (F)(5) below.**
- (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 type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input 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 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:** Within one (1) year of the effective date of discipline herein, respondent must submit to the Office of Probation satisfactory proof of completion of no less than six (6) hours of Minimum Continuing Legal Education (MCLE) approved courses in general legal ethics. This six-hour MCLE requirement is separate from any other MCLE requirement and respondent will not receive MCLE credit for the hours.

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

IN THE MATTER OF:                      OLEH R. TUSTANIWSKY

CASE NUMBER:                          15-J-10070

**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. 15-J-10070 (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. On July 5, 2005, respondent Oleh R. Tustaniwsky ("respondent") was admitted to practice law before the United States Court of Appeals for the Second Circuit ("Court"). That admission remained in effect at all pertinent times herein.

2. On February 22, 2010, the Court referred respondent to the Committee on Admissions and Grievances ("Committee") to determine possible misconduct. The Committee held a hearing over four days on December 7, 2010, December 20, 2010, March 28, 2011, and May 23, 2011. Following the hearing, the Committee issued a Report and Recommendation on November 14, 2011, finding by clear and convincing evidence that respondent had committed violations of Federal Rule of Appellate Procedure 46(c) as well as D.R. 6-101(a)(3) and D.R. 7-101 of the Code of Professional Responsibility of New York.

3. On July 9, 2014, the United States Court of Appeals for the Second Circuit filed its decision in which it ordered, adjudged, and decreed that the findings of the Committee were adopted. The Court ordered that respondent be suspended from practice before the court for one (1) year for the violations found in the Committee's report. Thereafter, the order of the Court became final.

4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

**FACTS FOUND IN OTHER JURISDICTION:**

5. Over the course of the hearing, the Committee investigated three allegations and ultimately found each proven by clear and convincing evidence. Specifically, the Committee found that: (1) respondent repeatedly failed to follow scheduling orders; (2) respondent filed insufficient briefs which omitted specific issues and which resulted in waiver of his clients' arguments; and (3) respondent submitted and filed meritless petitions. Misconduct occurred in 33 client matters.

6. Due to the large number of cases, the Committee illustrated the misconduct through several examples rather than listing each case in particular. This stipulation will follow that example.

7. Respondent handled 74 cases before the Court. Of those, 22 involved the violation of scheduling orders. In ten such cases, the Court issued an Order to Show Cause to which respondent did not substantively reply. In at least eight cases, respondent moved for extensions of time to file the brief or for reinstatement after dismissal and such motion was granted. In two cases, the matters were dismissed and respondent's motion for reinstatement was denied. In two cases, the matters were dismissed and respondent made no motion to reinstate the matters. Relevant examples include the following:

- a. In *Fu v. Mukasey* (08-0564), the Court issued an order on July 9, 2008 that the petitioner's brief be filed by August 8, 2008. When no filing or motion was made, the Court issued an Order to Show Cause on September 22, 2008 directing that respondent respond by September 29, 2008. When no response was received, the Court dismissed the matter on October 8, 2008. No motion to reinstate the matter was filed. These actions violated Business and Professions Code sections 6068(b) and 6103.
- b. In *Li v. Mukasey* (08-2190), respondent filed the Form C/A late. A July 9, 2008 scheduling order set the deadline for the brief as August 8, 2008. No brief was filed. On October 2, 2008, the Court issued an Order to Show Cause demanding a response by October 16, 2008. Instead of responding, respondent requested an extension due to illness. On October 22, 2008, the Court replied that "illness is not a justification for simply ignoring scheduling orders." On December 9, 2008, when no brief had been filed, the Court dismissed the matter. These actions violated Business and Professions Code sections 6068(b) and 6103.
- c. In *Jiang v. Mukasy* (08-3275), respondent filed the Form C/A late. The Court issued a scheduling order on August 8, 2008 and directed respondent to file his brief on September 8, 2008. When no filing was made, on October 7, 2008, the Court issued an Order to Show Cause requiring respondent to respond by October 21, 2008. Respondent did not respond. On October 28, 2008, the Court ordered the appeal dismissed. On February 17, 2009, respondent filed a motion to reinstate the appeal and submitted his brief. The Court granted the motion. These actions violated Business and Professions Code sections 6068(b) and 6103.
- d. In *Chen v. Mukasey* (08-0516), the Court ordered that respondent file his brief by April 16, 2008. On April 16, 2008, respondent requested a continuance and the court extended the deadline for the brief until May 16, 2008. On May 14, 2008, respondent moved for a further extension which the Court granted and set the deadline for June 16, 2008. On June 17, 2008, respondent requested another extension. On June 27, 2008, the Court "reluctantly granted" the extension but ordered that "if a brief is not filed by July 16, 2008, the appeal shall be dismissed without further notice by the Court." When no brief was filed, the Court dismissed the appeal on August 22, 2008. On September 4, 2008, respondent filed a motion to reinstate the appeal along with a brief. The Court rejected that motion. These actions violated Business and Professions Code sections 6068(b) and 6103.
- e. In *Chen v. Holder* (09-1948), the Court ordered that the brief be filed by October 5, 2009. Respondent did not file the brief at that time, but on October 22, 2009, requested an extension which the Court granted. The Court set the deadline for



filing the brief as November 5, 2009. No brief was filed by that date. On November 24, 2009, the Court issued an Order to Show Cause requiring respondent to respond by December 8, 2009. Respondent did not respond as required. On January 26, 2010, the Court dismissed the appeal. On February 16, 2010, respondent filed a motion to reinstate the appeal which the Court granted. These actions violated Business and Professions Code sections 6068(b) and 6103.

8. Respondent failed to fully brief his clients' arguments before the Court and, as a result, numerous arguments among several clients were dismissed. Relevant examples include the following:

- a. In *Wang v. Keisler* (07-4917), filed November 5, 2007, respondent made three claims for relief in the lower court: (1) political asylum; (2) withholding of removal; and (3) relief under the Convention Against Torture ("CAT"). On appeal, however, he briefed only a separate issue – the fact that his client had two children in the United States. The other issues were not raised and were deemed waived on appeal in the Second Circuit's July 31, 2008 judgment. These actions violated Rules of Professional Conduct, rule 3-110(A).
- b. In *Li v. Mukasey* (08-1250), filed March 17, 2008, after filing of the brief, the Government moved for summary affirmance. Respondent did not reply to the Government's motion with facts, law, and argument, but instead filed a one page document referring to the brief and making conclusory statements. The Court granted the Government's motion on May 22, 2009. These actions violated Rules of Professional Conduct, rule 3-110(A).
- c. In *Jiang v. Mukasey* (08-1505), filed March 31, 2008, respondent was retained by another attorney to file a brief challenging the lower court's ruling denying withholding of removal and CAT relief. Instead, respondent's brief sought only remand to the lower court asking for "derivative asylee status based on [the client's] wife's application." Not only did this waive issues with the lower court's ruling, but also addressed an issue for which the Court did not have jurisdiction and resulted in a dismissal of the Petition on December 31, 2008. These actions violated Rules of Professional Conduct, rule 3-110(A).
- d. In *Jiang v. Mukasey* (08-3275), filed July 2, 2008, respondent failed to challenge the Board of Immigration Appeals' ("BIA") adverse credibility determination and such issue was deemed waived. Respondent's argument for relief under CAT was also not heard because it was not first raised before the BIA. The Court denied the petition on June 24, 2009. These actions violated Rules of Professional Conduct, rule 3-110(A).
- e. In *Lin v. Mukasey* (08-5988), filed December 8, 2008, respondent waived various appellate arguments by failing to raise those arguments before the BIA in the first instance. The Court denied the petition on December 30, 2009. These actions violated Rules of Professional Conduct, rule 3-110(A).

9. Respondent also submitted meritless petitions to the Court. In one instance, respondent filed a petition approximately three months after the decision of the BIA. However, there is a 30 day time limit for appealing a BIA decision and, therefore, respondent's petition was meritless.

## CONCLUSIONS OF LAW:

10. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in the United States Court of Appeals for the Second Circuit warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

## AGGRAVATING CIRCUMSTANCES.

**Indifference (Std. 1.5(g)):** Both the Committee and the Court found that respondent demonstrated a lack of remorse for his actions. Although he acknowledged many of the underlying facts, respondent displayed indifference. In fact, the Committee described respondent as "disdainful" and "arrogant." The Committee's report stated that respondent, "made it clear that he considered this process largely a waste of time" and refused to answer some of the Committee's questions. This demonstrates that he lacks appreciation of the significance of the misconduct. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.)

**Multiple Acts of Misconduct (Std. 1.5(b)):** Respondent repeatedly violated scheduling orders in 22 matters and required the Court to issue Orders to Show Cause in ten matters. Respondent also did not adequately brief his client's matters resulting in waiver of claims. Finally, respondent filed petitions which he knew to be meritless. This constitutes multiple acts of wrongdoing and aggravates respondent's misconduct. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168.)

**Pattern of Misconduct (Std. 1.5(c)):** Respondent violated scheduling orders in 22 cases and required ten orders to show cause. As found by the Court, this resulted in part because respondent refused to file the ordered brief until his fee had been paid. The misconduct, including filing meritless briefs and insufficient briefing, occurred in cases filed from June 19, 2006 through June 10, 2009. Repeated conduct over three years establishes a pattern of misconduct. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 879.)

## MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Respondent has been admitted to practice law since August 1986. Respondent has been discipline free for 20 years of practice from admission to the earliest misconduct herein (2006) and is therefore entitled to mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.) The Review Department has found 24 years of practice without discipline to be entitled to "significant" mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167.)

**Prefiling Stipulation:** Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to the filing of disciplinary charges. Respondent's cooperation at this early stage will save the State Bar significant resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 (where mitigation credit was given for entering into a stipulation as to facts and culpability).)

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## 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).)

In this matter, Respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, Respondent’s misconduct in the other jurisdiction demonstrates a violation of Rules of Professional Conduct, rule 3-110(A), and Business and Professions Code sections 6068(b), 6068(c), and 6103.

Standard 2.5 covers respondent’s failure to competently perform by failing to properly brief his client’s matters and failing to timely file briefs. This behavior occurred in thirty-three matters over a period of three years. As such, respondent’s actions represent a pattern of misconduct and subsection (a) of Standard 2.5 applies. In that instance, disbarment is the appropriate sanction.

Standard 2.8(a) indicates that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member’s practice of law ... or the duties required of an attorney under Business and Professions Code section 6068(a)-(h).” This includes respondent’s violation of sections 6068(b), 6068(c), and 6103.

Where a member commits two or more acts of misconduct and the Standards specify different sanctions, the most severe sanction must be imposed. (Standard 1.7(a).) Here, that sanction is standard 2.5(a) which calls for disbarment.

By failing to timely file petitions in 22 cases, respondent violated his duties to his client. “Without question, respondent’s fiduciary duties to his clients also required that he develop and maintain adequate

management and accounting procedures for the proper operation of a law office. ... At a minimum, respondent was required to develop and maintain procedures for: the proper maintenance and protection of client files; calendaring court hearings and filing deadlines; tracking court hearing dates and filing deadlines to insure they are not missed; tracking correspondence and client communications; secure handling and accurate accounting of client trust funds and other property.” (*In the Matter of Valinotti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522.) Here, respondent repeatedly violated that duty. As a result, several of his clients were harmed when their cases were dismissed without review on the merits.

Accordingly, the Standards indicate that respondent should be disbarred.

However, Standard 1.7(c) requires a review of respondent’s mitigation – both alone and in conjunction with the aggravating circumstances. Respondent has a long (20 year) history of practice without misconduct and is entitled to significant mitigation. Further, although respondent displayed indifference in the underlying matter, respondent has entered into this stipulation by which he has admitted culpability and cooperated with the State Bar.

Further, during the time of the misconduct, respondent was employed with a firm that threatened to terminate him if he did not act or cease to act as directed – even where such directions required that he commit misconduct. Respondent is no longer employed with that firm. While respondent maintains an independent duty to avoid misconduct, this change in employment demonstrates that respondent is less likely to commit additional misconduct.

Given the lengthy discipline-free practice, as well as respondent’s acknowledgment of his misconduct as represented by this stipulation, deviating from the Standard is warranted. Specifically, respondent should receive a four-year suspension with the execution of that suspension stayed. Respondent should also receive a four-year period of probation with conditions including an actual suspension for two years and until the showing required by Standard 1.2(c)(1). Case law supports this recommendation.

In *Young v. State Bar* (1990) 50 Cal.3d 1204, the attorney was found culpable of misconduct in seven client matters including seven counts of Business and Professions Code sections 6068(a) and 6103, seven counts of former rule 2-111(A)(2) (withdrawing without taking reasonable steps to protect client), six counts of former rule 6-101(A)(2) (failure to perform with competence), and two counts of former rule 2-111(A)(3) (failure to return unearned fees). In mitigation, Young was candid and cooperative, was suffering from illness at the time of the misconduct, and had no prior record of discipline over six years. No factors were found in aggravation. The Court imposed discipline consisting of a three-year period of stayed suspension and a three-year period of probation with conditions including an actual suspension of two years.

The misconduct in the present matter is analogous to the misconduct in *Young*. Although respondent’s actions do not involve a failure to return unearned fees, they do involve failure to perform with competence by failing to timely comply with court orders and failing to sufficiently brief issues. Further, respondent’s conduct includes many more instances (33 client matters) than in *Young*. The mitigation is of a different character but similar in weight to that in *Young*. There, mitigation came from illness and cooperation. Here, mitigation results primarily from a lengthy period of prior practice. Because respondent’s mitigation is somewhat tempered by the fact that a pattern emerged over three years, the weight in mitigation rises only to the approximate level of that present in *Young*. However, respondent’s conduct is more aggravated than in *Young*. On balance, a similar amount of actual

suspension is warranted, but because the conduct is more aggravated, a longer period of stayed suspension and probation is merited.

Two other cases also provide insight. In *Cooper v. State Bar*, *supra*, 43 Cal.3d 1016, the attorney breached a fiduciary duty to a client in one matter, failed to pay medical liens in two matters, and impermissibly withdrew and failed to provide the client's papers in three matters. In mitigation, respondent had been discipline free for twenty-five years. In *Cooper*, the Court stated that disbarment would not be warranted given the long history of discipline free practice but for the attorney's subsequent actions during trial and after the misconduct. Specifically, the attorney attempted to delay trial and argued that the misconduct occurred during a period in which he was "burnt out" on the practice of law. However, he did not provide any assurance that he would not be "burnt out" in the future and the Court was skeptical that a sanction less than disbarment would protect the public. That additional aggravation is not present here. And, although the instant misconduct spans far more client matters, there is no allegation of self-dealing and breach of fiduciary duty as in *Cooper*.

In *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, the attorney was found culpable of impermissibly withdrawing from seven client matters, failing to return unearned fees in six client matters, failure to perform competently in thirteen client matters, failure to hold advanced payments in a client trust account in two client matters, failure to render an accounting in one matter, failure to promptly pay money to two clients she held on their behalf, three acts of moral turpitude, and the unauthorized practice of law. There, the Court imposed discipline consisting of a five-year stayed suspension and a five-year period of probation with conditions including an actual suspension of one year. Critical to the determination was the Court's finding that the misconduct occurred during a period of substantial personal and financial difficulty including injuries stemming from falls and an automobile accident, marital difficulties, loss of a business relationship, pregnancy, her husband's diagnosis of a brain tumor, diagnosed depression, and her husband's abandonment of the family. Given this extreme difficulty, along with a showing that she had recovered and moved forward, the Court found a two-year actual suspension unduly harsh. Respondent's misconduct is of a similar nature and occurred over a similar period but included many more impacted individuals. And, unlike *Silva-Vidor*, respondent here has no such showing of extreme personal or financial difficulties. Therefore, a reduction to as low as one year actual suspension is not warranted.

Discipline consisting of a four-year period of stayed suspension, along with a four-year period of probation with conditions including a two-year period of actual suspension and until respondent makes the showing required by Standard 1.2(c)(1) will protect the public and serve the purposes of attorney discipline.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 10, 2015, 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.

#### **EXCLUSION FROM MCLE CREDIT**


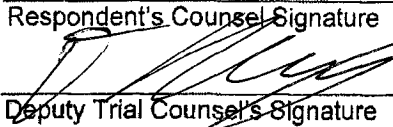
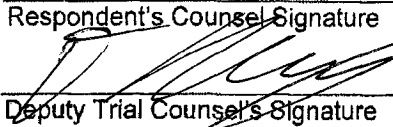
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of the six (6) hours of Minimum Continuing Legal Education ("MCLE") required by section (F)(5) of this stipulation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: OLEH R. TUSTANIWSKY	Case number(s): 15-J-10070
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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>04/01/15</u> Date	<u></u> Respondent's Signature	<u>Oleh Tustaniwsky</u> Print Name
<u>4-6-15</u> Date	<u></u> Respondent's Counsel Signature	<u>Drew Massey</u> Print Name
	<u></u> Deputy Trial Counsel's Signature	<u></u> Print Name

(Do not write above this line.)

In the Matter of: OLEH R. TUSTANIWSKY	Case Number(s): 15-J-10070
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### 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.

On Page 9 of the stipulation, paragraph 9, add: "Respondent failed to maintain just actions by filing meritless petitions in willful violation of Business and Professions Code section 6068, subdivision (c)."

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

4-9-15

  
GEORGE E. SCOTT, JUDGE PRO TEM  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 10, 2015, 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:

**OLEH R. TUSTANIWSKY  
2066 E 15TH ST APT 3C  
BROOKLYN, NY 11229 - 3336**

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

**Drew D. Massey, Enforcement, Los Angeles**

**Terrie Goldade, Probation, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 10, 2015.



Paul Barona  
Case Administrator  
State Bar Court