



ORIGINAL

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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
Counsel For The State Bar Drew Massey Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017-2525 Tel: (213) 765-1204 Bar # 244350	Case Number(s): 15-O-11897	For Court use only <div style="text-align: right;"> FILED NOV 03 2015 <i>P.B.</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
In Pro Per Respondent Lawrence Osuch 13185 Stone Canyon Road Poway, CA 92064 Tel: (858) 312-1705 Bar # 69249	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: LAWRENCE THEODORE OSUCH Bar # 69249 A Member of the State Bar of California (Respondent)			

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 25, 1976**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)

Stayed Suspension

- (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.
- ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: **three billing cycles following the effective date of discipline.** (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(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.
- (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.
- (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. **See page 7.**
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

Absence of prior discipline, pre-filing stipulation, and community service. See page 7.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general 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:

The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ 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.
- (4) ☒ 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.

- (5) ☐ 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.
- (6) ☒ 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.
- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ 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.
- (9) ☐ 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 within one year. **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) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: LAWRENCE THEODORE OSUCH

CASE NUMBER: 15-O-11897

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-O-11897 (State Bar Investigation)

FACTS:

1. In order to remain an active member of the State Bar, Lawrence Theodore Osuch ("respondent") was required to complete 25 hours of Minimum Continuing Legal Education ("MCLE") during the period February 1, 2011 through January 31, 2014 (the "compliance period").

2. On February 2, 2014, respondent reported to the State Bar, under penalty of perjury, that he was in compliance with the MCLE requirements and, in particular, that he had completed his MCLE during the compliance period.

3. In fact, respondent had completed only 2.5 hours of MCLE during the compliance period.

4. In January 2014, respondent was aware that he needed additional hours of MCLE credit and purchased a bundled MCLE program. However, due to medical and other personal issues, he did not complete the MCLE programs at that time, nor before he affirmed his compliance.

5. When respondent reported to the State Bar under penalty of perjury that he was in compliance with the MCLE requirements, respondent made an intentional misrepresentation because he knew that he was not then in compliance.

6. Subsequently, respondent completed the required 22.5 MCLE hours and paid applicable penalties as part of an MCLE audit.

CONCLUSIONS OF LAW:

7. By reporting to the State Bar, under penalty of perjury, that respondent was in full compliance with the MCLE requirements, when respondent knew that he was not in compliance, respondent intentionally committed an act involving moral turpitude, dishonesty or corruption in willful violation of California Business and Professions Code section 6106.

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ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

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).)

Absence of Prior Record of Discipline. Respondent was admitted to practice law in June 1976 and was an active member at all times since. Respondent has been discipline-free for approximately 37 years of practice from admission to the misconduct herein. Respondent is entitled to significant weight in mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 167.)

Good Character (Std. 1.6(f)). Respondent has provided evidence of eight individuals willing to attest to his good character. Each has known respondent for a significant period. However, seven of the eight individuals are from the legal field, either as attorneys, mediators, paralegals, or expert witnesses. Therefore, modest mitigation is warranted. (*See, In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 (giving "limited weight" to a showing of three attorneys and three clients).)

Community Service. Between 2006 and 2009, respondent was a member of the Nevada State Bar's Fee Dispute Committee. While in that capacity, he served as a panel or single arbitrator in five fee disputes. Respondent's service in that capacity was not compensated. Community service is a mitigating circumstance. (*Rose v. State Bar* (1989) 49 Cal. 3d 646, 667; *In the Matter of Yee, supra*, 5 Cal. State Bar Ct. Rptr. 330.)

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; hereinafter "Standards.") 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, Standard 1.1; In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92 (quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11).) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Standard 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Standard 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. (Standards 1.7(b)-(c).)

Pursuant to Standard 2.11, "disbarment or actual suspension" is the presumed sanction for an act of moral turpitude. The mere failure to review a member's records before the member affirms compliance with the MCLE requirements is gross negligence amounting to moral turpitude. (*In the Matter of Yee*, (Review Dept. 2014) 5 State Bar Ct. Rptr. 330.) Intentional misrepresentation, by contrast, is also an act of moral turpitude and more serious misconduct. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 997 (noting that intentional misconduct is more serious misconduct than grossly negligent misconduct).) Thus, the Standard calls for actual suspension at minimum.

Here, respondent has significant mitigation. He has practiced law for 37 years without a prior record of discipline. The lack of a prior record of discipline is mitigating and, in this case, the lengthy period of prior practice is entitled to substantial mitigating weight. Further, respondent has rendered significant community service and also has provided modest evidence of good character. The lack of a prior record over a substantial period, coupled with evidence of good character and community service, indicate that the misconduct is unlikely to recur.

MCLE compliance serves the purposes, among others, of ensuring public confidence and maintaining high standards in the legal profession. An attorney who fails to meet MCLE requirements, and who then misrepresents compliance, directly undermines public confidence and the maintenance of high standards.

While the Standard calls for an actual suspension, Standard 1.7(c) indicates that mitigating factors should be considered and may demonstrate the need for a lesser sanction than called for by the Standards. Here, the mitigation tends to indicate that the misconduct is unusual and not likely to recur. Therefore, deviation from the Standard is warranted.

A one-year period of stayed suspension, along with a one-year period of probation with conditions is sufficient to protect the public, the courts, and the legal profession; maintain the highest professional standards; and preserve public confidence in the profession.

Case law provides guidance. In *In the Matter of Yee*, *supra*, 5 Cal. State Bar Ct. Rptr. 300, the attorney misrepresented her MCLE compliance to the State Bar. She insisted that she believed she was in compliance at the time of the misrepresentation because she misremembered when she took her bundle of MCLE courses. The review department credited her testimony, but still found such conduct constituted gross negligence amounting to moral turpitude.

In mitigation, the *Yee* attorney had ten years of discipline free practice, good character references, displayed candor and cooperation, showed remorse, and instituted a change in law office procedures. No factors were found in aggravation. In recognition of the substantial mitigation, the review department imposed a public reproof.

While based on similar events, the misconduct in this case is more serious than that present in *Yee*. The *Yee* attorney was found to have acted in gross negligence. By contrast, respondent has committed an intentional misrepresentation which is more serious misconduct. While respondent has significant mitigating factors, he lacks other areas of mitigation present in *Yee* – most notably a change in law office practices. Therefore, while deviation from Standard 2.11 is appropriate, a deviation as low as a

public approval is not warranted. A one year period of stayed suspension is appropriate and will serve the purposes of discipline as set forth in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of October 20, 2015, the prosecution costs in this matter are approximately \$3,066. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

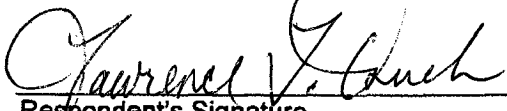
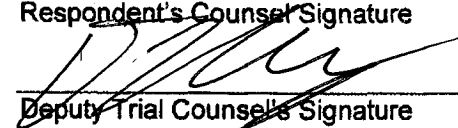
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: LAWRENCE THEODORE OSUCH	Case number(s): 15-O-11897
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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>10-28-15</u> Date	<u></u> Respondent's Signature	<u>Lawrence Osuch</u> Print Name
<u>10-30-15</u> Date	<u></u> Respondent's Counsel Signature	<u>Drew Massey</u> Print Name

(Do not write above this line.)

In the Matter of: LAWRENCE THEODORE OSUCH	Case Number(s): 15-O-11897
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STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

November 3, 2015
Date


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 November 3, 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:

**LAWRENCE THEODORE OSUCH
LAW OFFICE OF LAWRENCE T OSUCH
13185 STONE CANYON RD
POWAY, CA 92064**

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 3, 2015.



Paul Barona
Case Administrator
State Bar Court