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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER	
Counsel For The State Bar Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182 Bar # 281574	Case Number(s): 16-J-10756-CV	For Court use only <div style="text-align: right;"> FILED MAY 02 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>		
Counsel For Respondent David Kestenbaum Kestenbaum Law Group, APC 14401 Sylvan St., Ste. 100 Van Nuys, CA 91401 (818) 616-4312 Bar # 85228	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING			
In the Matter of: SCOTT MICHAEL CANTOR Bar # 79851 A Member of the State Bar of California (Respondent)	ACTUAL SUSPENSION <input checked="" type="checkbox"/> 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 **June 23, 1978**.
- (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 **17** 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."

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- (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: **three billing cycles following the effective date of the Supreme Court order.** (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.
- (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.

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- (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 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Prior record of discipline, see attachment, page 14.

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.
- (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:

Pretrial Stipulation, see attachment, page 14.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and 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:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of **one year**, 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 **sixty (60) days**.
- 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:

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 present 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: SCOTT MICHAEL CANTOR

CASE NUMBER: 16-J-10756-CV

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. 16-J-10756-CV (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.
2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").
3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.
4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.
5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.
6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.
7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.
8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

SG10-0429, Matter re Bijan Safi

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.

23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.

35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.

46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

SB11-1139, Matter of Marhayra Bermudez

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

SG11-1330, Matter of Frank and Robert Alfano

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada 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.

Prior Record of Discipline (Std. 1.5(a)): On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept.1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

Failure to Make Restitution (Std. 1.5(m)): Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and 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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

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

In this matter, respondent 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. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

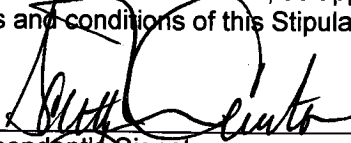
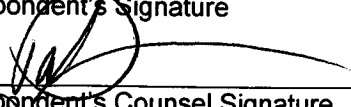
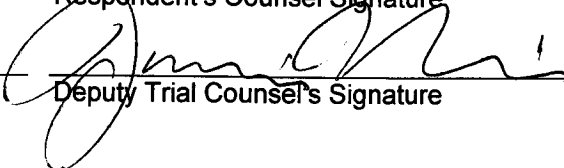
Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: SCOTT MICHAEL CANTOR	Case number(s): 16-J-10756-CV
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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>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:
SCOTT MICHAEL CANTOR

Case Number(s):
16-J-10756-CV

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.
1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
 2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

May 2, 2017
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
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 May 2, 2017, 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:

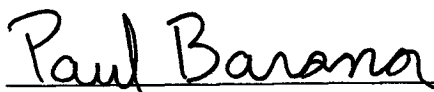
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM
KESTENBAUM LAW GROUP, APC
14401 SYLVAN ST
STE 100
VAN NUYS, CA 91401**

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

JAMIE J. KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona
Case Administrator
State Bar Court