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State Bar Court of California
Hearing Department
Los Angeles
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Anita Kabaei Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1248</p> <p>Bar # 270209</p>	<p>Case Number(s): 16-J-15739-RR</p>	<p>For Court use only</p> <p>FILED</p> <p>JUN 30 2017 <i>YJC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Timothy J. Priebe 1880 Office Club Pointe Suite 2220 Colorado Springs, CO 80920 (719) 388-8899</p> <p>Bar # 169580</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: TIMOTHY JAMES PRIEBE</p> <p>Bar # 169580</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 **December 10, 1993**.
- (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 **13** 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):
 - 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: (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..

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. (See attachment, page 10.)
- (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 9-10.)
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur. (See attachment, page 10.)
- (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.

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- (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 attachment, page 10.)**
- (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

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 **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:

The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent is placed on probation for a period of **two years**, 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

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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: **Respondent resides out of state and has completed a comparable alternative to State Bar Ethics School. On November 13, 2015, respondent attended Ethics School class in the State of Colorado pursuant to the probation conditions related to the Colorado Supreme Court Case Number 15PDJ077. Respondent passed the test given at the end of the session and has provided proof of completion as of May 9, 2016.**
- (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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TIMOTHY JAMES PRIEBE

CASE NUMBER: 16-J-15739-RR

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-15739 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On May 24, 2004, respondent was admitted to the practice law in the State of Colorado.
2. On August 27, 2015, respondent entered into a Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct ("Stipulation") with the Colorado Supreme Court in Case Number 15PDJ077 admitting that respondent had committed violations of rules 1.1 [Duty to be Competent], 1.3 [Duty to be Diligent], and 1.4(a) and (b) [Duty to Communicate] of the Colorado Rules of Professional Conduct.
3. On July 19, 2016, the Stipulation was approved by the Presiding Disciplinary Judge of the Colorado Supreme Court in Case Number 15PDJ077. Thereafter, the order of the Colorado Supreme Court became final.
4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. In February 2009, Ms. LaGrone hired respondent to represent her interests concerning restitution owed to her. Respondent was paid a total of \$2,500 in legal fees and expenses.
6. In January 1998, Ms. LaGrone, invested money with a third party, Gary Smith. In December 2003, Mr. Smith pled guilty to securities fraud. As part of the plea agreement, Mr. Smith agreed to pay restitution to three victims, one of whom was Ms. LaGrone. A Restitution Judgment and Payout Order was issued by agreement of the parties. As part of the Restitution and Judgment and Payout Order, Mr. Smith was ordered to pay Ms. LaGrone the sum of \$100,000 plus 12% interest until paid in full. As part of the plea agreement, Mr. Smith's wife, Paulette Smith, executed a promissory note secured by a deed of trust. Payment on the promissory note was scheduled to begin on December 8, 2005. Mrs. Smith did not make any payments to Ms. LaGrone. As a result, Mrs. Smith was in default for \$100,000, plus outstanding and accrued interest due. On May 27, 2008, a motion hearing was held concerning Mr.

Smith's deferred sentence. The case was closed and the Judge advised Mr. Smith that he was obligated to pay the victims, including Ms. LaGrone.

7. On August 10, 2009, respondent served judgment debtor interrogatories on Mr. and Mrs. Smith. Mr. Smith filed a motion objecting to responding to interrogatories on behalf of Mrs. Smith since she was not a judgment debtor. Respondent filed a timely response to Mr. Smith's objection.

8. On January 7, 2010, the court ordered Mr. Smith to answer interrogatories related to Mrs. Smith and authorized a judgment debtor examination to obtain additional details concerning Mr. Smith's assets. On January 11, 2010, respondent informed Ms. LaGrone of the court's order and that he intended to aggressively pursue the matter.

9. On July 27, 2010, Mr. Smith responded to a portion of the judgment debtor interrogatories. Respondent served a second set of interrogatories to which Mr. Smith submitted a response on August 16, 2010. From July 2010 to November 2010, respondent and Mr. Smith exchanged emails concerning Mr. Smith's deficient responses to both sets of interrogatories.

10. On March 16, 2011, respondent informed Ms. LaGrone via email, "I apologize if there has been a lack of communication...I will be reviewing your case and will be giving you an update. I think we have exhausted our options as to written discovery. I think it is time to pull him in for a deposition to determine exactly what his assets are. We may also start litigation against Mrs. Smith so we could get a judgment against her."

11. On October 21, 2011, approximately seven months later, respondent advised Ms. LaGrone via email that he thought they should pursue Mrs. Smith as she appeared to be the only one making legitimate money.

12. On December 8, 2011, the statute of limitations period expired on Ms. LaGrone's claim to collect on the promissory note. Pursuant to the Colorado Revised Statute 13-80-103.5(1), all actions for enforcement of a promissory note must be brought within six years after the cause of action accrues.

13. Respondent failed to realize that Ms. LaGrone's cause of action accrued on December 8, 2005, and that the statute of limitations would prevent her from filing any collection action against Mrs. Smith after December 8, 2011. Respondent had the mistaken belief that the three-year statute of limitations period had run prior to respondent being retained by Ms. LaGrone. Additionally, respondent mistakenly believed a three-year breach of contract statute of limitations period applied to Ms. LaGrone's ability to collect on the promissory note. Respondent did not inform Ms. LaGrone that the statute of limitations had run.

14. On January 5, 2012, respondent advised Ms. LaGrone via email, "I think the next thing we need to do is go after Mrs. Smith as I think she is the only one working." Respondent later informed Ms. LaGrone that the three-year statute of limitations had expired in 2008, prior to him being retained.

15. Respondent believed that certain language in the promissory note may have allowed Ms. LaGrone to defeat the statute of limitations defense. However, respondent did not conduct any research to determine whether the language in the promissory note would circumvent the applicable statute of limitations. Respondent did not contact Mrs. Smith, the debtor, to discuss the extension of the time to

pay or to obtain any agreement in writing regarding an extension of the payment period or tolling the statute of limitations.

16. On January 17, 2012, respondent sent Ms. LaGrone an email wherein he suggested she proceed against Mrs. Smith. Respondent discussed the statute of limitations, but he did not explain to Ms. LaGrone that the statute of limitations had expired on December 8, 2011.

17. On January 25, 2012, respondent sent an email to Ms. LaGrone suggesting that she pursue her claim against Mrs. Smith. Ms. LaGrone requested a billing from respondent in order to determine how much more funds she would have to expend in the matter.

18. On March 8, 2012, respondent advised Ms. LaGrone about having Mr. Smith testify in court as to his assets. Respondent stated to Ms. LaGrone, "I think you seriously also need to look at Mrs. Smith and whether you need to file suit against her so you could bring forth the argument that you either can sue her or not due to the time restraints. As we talked about before, it could be argued that your time to file has passed. However, the promissory note also appears to give you the ability to do so. Either way, you need to bring it so that she could assert the argument if she wants to."

19. Respondent did not file an action against Mrs. Smith.

20. On June 5, 2012, Ms. LaGrone sent respondent an email stating, "How much do I need to pay you before you will continue with my case against Gary Smith? I am shocked at your lack of representation in this matter." On June 13, 2012, respondent sent Ms. LaGrone an email apologizing. Respondent asked if Ms. LaGrone wished for him to proceed with the deposition of Mr. Smith so they could determine what assets he has. Respondent further stated, "As I remember that the other choice is to sue Mrs. Smith but we will have to deal with whether the statute [sic] of limitations has run or not." Ms. LaGrone stated to respondent that she wanted him to do "whatever he has to do to pursue both of them, including [his] idea to get around the statute of limitations problem."

21. On September 4, 2012, approximately three months later, respondent sent Ms. LaGrone an email with an attachment of a demand letter addressed to Mrs. Smith. Respondent informed Ms. LaGrone that he intended to file a lawsuit against Mrs. Smith in the event she did not respond. As to Mr. Smith, respondent stated that he planned to complete legal research that week for the purpose of bringing Mr. Smith to a debtor's examination. Respondent further stated to Ms. LaGrone that he would keep her informed. Later that day, Ms. LaGrone informed respondent that she would send him a check to cover the filing fees concerning the lawsuit against Mrs. Smith.

22. On September 5, 2012, respondent sent a letter to Mrs. Smith demanding payment on the promissory note and respondent threatened to file a lawsuit. Mrs. Smith did not respond.

23. On December 6, 2012, Ms. LaGrone sent an email to respondent informing him that she had not heard from him since September 5, 2012.

24. On December 14, 2012, respondent apologized for his lack of response and stated not much was going on. Respondent informed Ms. LaGrone that he was attempting to serve Mrs. Smith. Respondent had not yet drafted a complaint. Respondent further informed Ms. LaGrone that he was trying to confirm a date for a hearing concerning Mr. Smith, however, respondent was holding off on setting a date until after they had verified their correct address. That same day, Ms. LaGrone responded,

“I want to know exactly what your plans are in taking the necessary steps to get this matter to a hearing.” Respondent did not respond.

25. On January 23, 2013, Ms. LaGrone sent respondent an email requesting the status of her case.

26. On February 11, 2013, Ms. LaGrone sent respondent an email stating she had not heard from him since December 14, 2012. Ms. LaGrone’s husband telephonically contacted respondent and left him two messages. Respondent did not return the telephone calls.

27. On February 12, 2013, respondent informed Ms. LaGrone that he had contacted the court that day to obtain a court date for a debtor’s examination. Respondent stated he would draft a subpoena and attempt to serve Mr. Smith upon receiving a court date. Ms. LaGrone inquired as to the complaint against Mrs. Smith discussed in September of 2012. Ms. LaGrone noted to respondent, “This [lawsuit] apparently did not happen.” She advised respondent that she wished to pursue the promissory note against Mrs. Smith.

28. On March 13, 2013, approximately four years after being retained, respondent issued a subpoena to Mr. Smith. On March 19, 2013, respondent sent Ms. LaGrone an email and informed her that he sent a process server to compel Mr. Smith to attend a deposition at his office. The process server was unable to serve Mr. Smith.

29. On June 3, 2013, Ms. LaGrone expressed her dissatisfaction with respondent and informed him that her husband had contacted respondent on three different occasions, to which respondent failed to respond.

30. Respondent did not file an action against Mrs. Smith. Respondent terminated his legal services and turned over the client file to Ms. LaGrone.

31. On January 24, 2014, Ms. LaGrone hired new counsel who filed a lawsuit against Mrs. Smith. In response, Mrs. Smith’s counsel stated in writing that the statute of limitations had run in December of 2011 therefore the case should be immediately dismissed. In agreement, Ms. LaGrone’s counsel dismissed the lawsuit.

CONCLUSIONS OF LAW:

32. As a matter of law, respondent’s culpability of professional misconduct determined in the proceeding in the State of Colorado 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.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed multiple acts of misconduct in a single client matter. Respondent failed to perform services, failed to respond to client inquiries, and did not keep Ms. LaGrone reasonably informed on the status of her case. (*In the Matter of*

Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [Sometimes multiple acts of misconduct are considered serious aggravation].)

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): Respondent's failure to file a lawsuit against Mrs. Smith within the statutory period prevented Ms. LaGrone from collecting on a promissory note worth \$100,000. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 283 [attorney's failure to perform resulting in lost cause of action is significant client harm].) (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 642, 646 [The loss of a cause of action constitutes harm to the client].)

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent has no prior record of discipline and his misconduct is unlikely to recur. Respondent was admitted to the State Bar of California on December 10, 1993, with ten-years of discipline-free practice from 1994 through 2004. Respondent was admitted to the Colorado Bar on May 24, 2004, with 13-years of discipline free practice at the time of the misconduct. Respondent's many years of discipline-free practice in the jurisdictions of California and Colorado should be given significant mitigation. Additionally, respondent submitted results from an auditor who was retained to conduct a law office audit pursuant to the direction of the Office of Attorney Regulation Counsel as part of the disposition of the Colorado disciplinary matter. As a result of the audit, it was concluded that respondent has taken steps to diligently pursue client matters and that his misconduct was not likely to recur. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than 10 years of discipline-free practice entitled to "significant" mitigation].)

Extraordinary Good Character (Std. 1.6(f)): Respondent submitted six character letters from a widespread sample of the legal and general communities, including two attorneys, two former clients, an Operations Director and a law office auditor, and all of whom are aware of the full extent of respondent's misconduct and attested to an extraordinary demonstration of his good character. Over the last 11 years, respondent also engaged in a significant amount of community service, including serving as a mentor in Colorado Springs Teen Court, Inc., where he volunteered his time and expertise, helping students gain invaluable insight into practicing law. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service is mitigating factor]; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [performance of civic service and charitable work is entitled to mitigation as evidence of good character under standard 1.6(f)]; see also *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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 Spaitth* (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. Specifically, respondent’s misconduct in Colorado demonstrates violations of rule 3-110(A) [Failure to Perform with Competence] of the Rules of Professional Conduct and Business and Professions Code section 6068(m) [Failure to Respond to Client Inquiries and Failure to Inform Client of Significant Developments].

Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.” The most severe sanction applicable to respondent’s misconduct is found in standard 2.7(c), which applies to respondent’s violations of California Rules of Professional Conduct, rule 3-110(A) and Business and Professions Code section 6068(m). Standard 2.7(c) provides that suspension or revocation is the presumed sanction for performance and communication violations, which are limited in scope. The degree of the sanction depends on the extent of the misconduct and the degree of harm to the client.

Respondent’s misconduct is surrounded by aggravating circumstances in that respondent’s failure to file a lawsuit against Mrs. Smith within the statutory period prevented Ms. LaGrone from collecting on a promissory note worth \$100,000, and in mitigation, he had approximately 23-years of discipline-free practice at the time of the misconduct, has proven his good character, and entered into a pretrial stipulation, which, in totality, warrants significant mitigation.

In weighing the misconduct, along with the mitigation and aggravation, a discipline at the low range is warranted. An appropriate level of discipline a one-year suspension, stayed, conditioned on a two-year probation with conditions.

Relevant case law supports the instant discipline recommendation. In *Layton v. State Bar* (1990) 50 Cal.3d 889, the attorney was the decedent's counsel in a probate case wherein Layton was named executor of the decedent's estate and issued letters of administration. Over five years elapsed from the time the letters of administration were issued to the attorney in what appeared to be a simple estate to the time he was removed by the court as executor, having failed to bring the estate to closure. The attorney failed to have the house appraised for the purposes of either selling or renting it, he failed to pay the utility bills, failed to maintain insurance on the house and he failed to properly establish a trust account. The Supreme Court found that Layton wilfully failed to use reasonable diligence to accomplish the purposes for which he was employed and he recklessly failed to perform legal services competently. In mitigation, Layton had a discipline-free record for 30 years, an absence of gain from misconduct, and both emotional and physical difficulties, while significant harm to the beneficiaries and indifference was considered as aggravating factors. The Court ordered the attorney suspended for three years, stayed, conditioned on a three-year probation and 30-days actual suspension.

In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, an attorney with five years of practice, in representing a client in a divorce proceeding, had failed to communicate with her, take action on her behalf, or withdraw from the case. Although Van Sloten was found to have lacked appreciation of the disciplinary process, the Court determined that the attorney's failure to perform did not significantly harm the client. The Supreme Court ordered that the attorney be suspended for six months, stayed, conditioned on a one-year probation.

The instant matter is analogous to *Layton* and *Van Sloten* in that respondent's misconduct involved a single client matter in which the attorney failed to perform the legal services for which he was retained. Respondent did not perform substantive work on his client's case for over four years that he represented her, akin to *Layton* where the attorney remained inactive in his client's probate matter for approximately five years, resulting in significant harm to the client. Although Layton received mitigation credit for a lengthy discipline free record and emotional and physical difficulties, it was outweighed by his indifference toward rectification. Here, respondent's mitigation suggests acknowledgement of his misconduct and that it is unlikely to recur.

Therefore, based on the totality of the circumstances and relevant case law, respondent's misconduct warrants less discipline as imposed in *Layton* but slightly more discipline than in *Van Sloten*. Accordingly, a one-year suspension, stayed, conditioned on a two-year probation with conditions is appropriate discipline to protect the public, the courts and the legal profession, maintain high professional standards, and preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 18, 2017, the estimated discipline costs in this matter are \$3,215. 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 State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)


(Do not write above this line.)

In the Matter of: TIMOTHY JAMES PRIEBE	Case number(s): 16-J-15739-RR
--	---

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.

5/25/17  TIMOTHY J. PRIEBE
Date Respondent's Signature Print Name

6/7/17  Anita Kabaei
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: TIMOTHY JAMES PRIEBE	Case Number(s): 16-J-15739-RR
---	----------------------------------

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.

On page 9 of the Stipulation, last line, "on the status of" is deleted, and in its place is inserted "of significant developments in".

This order approves both the Stipulation Re Facts, Conclusions of Law and Disposition submitted by the parties on June 7, 2017, and the parties' Supplement to Stipulation Re Facts, Conclusions of Law and Disposition filed on June 27, 2017.

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 June 30, 2017

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, 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 June 30, 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:

**TIMOTHY J. PRIEBE
1880 OFFICE CLUB POINTE
STE 2220
COLORADO SPRINGS, CO 80920**

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

ANITA KABAEI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 30, 2017.



Tammy Cleaver
Case Administrator
State Bar Court

FILED

JUN 27 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 STATE BAR OF CALIFORNIA
2 OFFICE OF CHIEF TRIAL COUNSEL
3 STEVEN J. MOAWAD, No. 190358
4 CHIEF TRIAL COUNSEL
5 DONNA S. HERSHKOWITZ, No. 172480
6 DEPUTY CHIEF TRIAL COUNSEL
7 RENE L. LUCARIC, No. 180005
8 ASSISTANT CHIEF TRIAL COUNSEL
9 MELANIE J. LAWRENCE, No. 230102
10 SUPERVISING ATTORNEY
11 ANITA KABAEI, No. 270209
12 DEPUTY TRIAL COUNSEL
13 845 South Figueroa Street
14 Los Angeles, California 90017-2515
15 Telephone: (213) 765-1248

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 16-J-15739
14)
15 TIMOTHY JAMES PRIEBE ,) SUPPLEMENT TO STIPULATION RE
16 No. 169580,) FACTS, CONCLUSIONS OF LAW AND
17) DISPOSITION
18)
19 A Member of the State Bar.)

20 On June 7, 2017, the parties submitted to the court a Stipulation Re Facts, Conclusions of
21 Law and Disposition (Stipulation) in the above-entitled matter. On June 16, 2017, the court
22 served the parties with a Request for Submission of Supplement to Stipulation Re Facts,
23 Conclusions of Law and Disposition, requesting the parties to file a supplement to the
24 Stipulation, signed by the parties, identifying, authenticating, and attaching (1) a certified copy
25 of Colorado's disciplinary findings and final order imposing discipline (including, if any, the
26 Supreme Court order imposing discipline); and (2) a copy of the Colorado court orders, rules, or
27 statutes found to have been violated by Respondent.


28 In response to the Court's request, the parties, by and through the Office of the Chief
Trial Counsel of the State Bar of California ("State Bar"), Deputy Trial Counsel Anita Kabaei
and Respondent Timothy James Priebe ("Respondent") submit the following Supplement to

1 Stipulation Re Facts, Conclusions of Law ("Supplement") and stipulate to the authenticity of the
2 following attached documents:

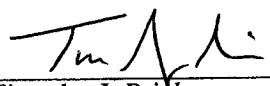
- 3 1) the Colorado's disciplinary findings and final order imposing discipline
4 against Respondent, entitled "Order Approving Conditional Admission of
5 Misconduct and Imposing Sanctions Pursuant to C.R.C.P. 251.22" as well as
6 "Stipulation, Agreement and Affidavit Containing the Respondent's
7 Conditional Admission of Misconduct" (attached hereto as Exhibit 1); and
8 2) the Colorado court orders, rules, or statutes found to have been violated by
9 Respondent, including specifically, Colorado Rules of Professional Conduct,
10 rules 1.1 (Competence), 1.3 (Diligence), and 1.4 (Communication) (attached
11 hereto as Exhibit 2).

12
13 Respectfully submitted,

14
15
16 DATED: June 27, 2017

16 By: 
17 Anita Kabaei
18 Deputy Trial Counsel

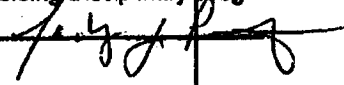
19
20 DATED: June 22, 2017

20 By: 
21 Timothy J. Priebe
22 Respondent

Supreme Court

State of Colorado

Certified to be a full, true and correct copy

<p>SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	<p>JUL 19 2016 Office of the Presiding Disciplinary Judge By </p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: TIMOTHY JAMES PRIEBE</p>	<p>Case Number: 15PDJ077</p>
<p>ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.22</p>	

Before the Presiding Disciplinary Judge ("the Court") is a "Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct" filed by Erin R. Kristofco, Office of Attorney Regulation Counsel ("the People"), and Timothy James Priebe ("Respondent") on August 27, 2015. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

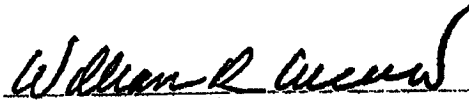
Upon review of the stipulation, the Court **ORDERS:**

1. The stipulation is **APPROVED**.
2. **TIMOTHY JAMES PRIEBE**, Attorney Registration Number 35548, is **SUSPENDED** from the practice of law for a period of **SIX MONTHS, ALL STAYED** upon the successful completion of a **TWO-YEAR** period of **PROBATION**, subject to the conditions set forth in paragraph 16 of the stipulation.
3. No more than twenty-eight days and no less than fourteen days prior to the expiration of the period of probation, Respondent shall file an affidavit with the People stating that he has complied with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. See C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the People, the Court shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*
4. If, during the period of probation, the People receive information that any condition may have been violated, the People may file a motion with the Court specifying the alleged violation and seeking an order that requires Respondent to show cause why

the stay should not be lifted and the sanction activated for violation of the condition. See C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

5. Pursuant to C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$91.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Offices. Statutory interest shall accrue from the date of this order. Should Respondent fail to pay the aforementioned costs and interest within thirty-five days, he shall be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

THIS ORDER IS ENTERED THE 31ST DAY OF AUGUST, 2015. THE EFFECTIVE DATE OF THE PROBATION IS THE 31ST DAY OF AUGUST, 2015.



WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE



Respondent

Timothy James Priebe
1465 Kelly Johnson Blvd. #200
Colorado Springs, CO 80920
tpriebe@priebelawfirm.com

Via Email

Office of Attorney Regulation Counsel

Erin R. Kristofco
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
e.kristofco@csc.state.co.us

Via Email

American Bar Association

c/o Nadine Cignoni
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
n.cignoni@csc.state.co.us

Via Email

**Board of Continuing Legal Education and
Colorado Attorney Registration**

Elvia Mondragon
Office of Attorney Registration
1300 Broadway, Suite 510
Denver, CO 80203
elvia.mondragon@judicial.state.co.us

Via Email

Colorado Bar Association

Patrick Flaherty, Executive Director
1900 Grant Street, Suite 950
Denver, CO 80203-4309
pflaherty@cobar.org

Via Email

Colorado Supreme Court

Christopher T. Ryan
2 East 14th Avenue
Denver, CO 80203
heather.petercarroll@judicial.state.co.us;
cheryl.stevens@judicial.state.co.us;
liz.cunningham@judicial.state.co.us

Via Email

IRS, Office of Professional Responsibility

Kathy Gibbs
SE: OPR, 1111, Constitutional Ave., N.W.
Washington, DC 20224
kathy.a.gibbs@irs.gov

Via Email

Martindale-Hubbell

Attn: Editorial Dept.
121 Chanlon Road, Suite 110
New Providence, NJ 07974
disciplinaryaction@lexisnexis.com

Via Email

Supreme Court of the United States

Perry Thompson, Admissions Office
1 First Street Northeast
Washington, D.C. 20543
pthompson@supremecourt.gov
ptadmit@supremecourt.gov

Via Email

United States Bankruptcy Court

Laura Guice
721 19th Street, Room 117
Denver, CO 80202-2508
laura_guice@cob.uscourts.gov
cobml_training@cob.uscourts.gov

Via Email

United States Court of Appeals for the Tenth Circuit

Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257
disciplinaryorders@ca10.uscourts.gov

Via Email

United States District Court, District of Colorado

Alfred A. Arraj U.S. Courthouse
Mark Fredrickson, Atty Services Coordinator
901 19th Street, Room A-105
Denver, CO 80294-3589
mark_fredrickson@cod.uscourts.gov
edward_butler@cod.uscourts.gov

Via Email

**United States Department of Justice,
Executive Office of Immigration Review**

Jennifer J. Barnes, Disciplinary Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
shella.williams@usdoj.gov
yada.teerawatkasem@usdoj.gov

Via Email

United States Department of Justice, Trustee's Office

Gregory Garvin, Assistant U.S. Trustee
999 18th Street, Suite 1551
Denver, CO 80202
gregory.garvin@usdoj.gov

Via Email

<p>SUPREME COURT, STATE OF COLORADO</p> <p>ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE PRESIDING DISCIPLINARY JUDGE 1300 Broadway, Suite 250 Denver, Colorado 80203</p>	<p>FILED</p> <p>AUG 27 2015</p> <p>PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF COLORADO ▲ COURT USE ONLY ▲</p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: TIMOTHY JAMES PRIEBE, # 35548</p>	<p>Case Number:</p> <p>15 PDJ 077</p> <p>Supreme Court State of Colorado Certified to be a full, true and correct copy</p> <p>JUL 19 2016</p> <p>Office of the Presiding Disciplinary Judge By <i>[Signature]</i></p>
<p>Erin Robson Kristofco, #33100 Assistant Regulation Counsel Attorneys for Complainant 1300 Broadway, Suite 500 Denver, Colorado 80203 Telephone: (303) 928-7911 Fax No.: (303) 501-1141</p> <p>Timothy James Priebe, # 35548 Respondent 1465 Kelly Johnson Blvd. #200 Colorado Springs, CO 80920 Telephone: 719 388-8899 Fax No: <i>fpriebe@priebelawfirm.com</i></p>	
<p>STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT</p>	

On this 27th day of August, 2015, Erin R. Kristofco, Assistant Regulation Counsel and attorney for the complainant, and Timothy James Priebe, the Respondent, in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: Six month suspension, all stayed upon successful completion of a two year probation, with conditions.

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on May 24, 2004, and is registered as an attorney upon the official records of this Court, registration no. 35548. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

a) In January 1998, Respondent's client, Ms. LaGrone, invested money with third party, Gary Smith. In December 2003, Mr. Smith pled guilty to securities fraud. As part of the plea agreement, Mr. Smith agreed to pay restitution to three victims, one of whom was Ms. LaGrone. A Restitution Judgment and Payout Order was issued by agreement of the parties. As part of that Restitution Judgment and Payout Order, Mr. Smith was ordered to pay Ms. LaGrone the sum of \$100,000 plus 12% interest until paid in full. Additionally, as part of the plea agreement, Mr. Smith's wife (Paulette Smith) executed promissory notes secured by deeds of trust. Payment on the \$100,000 promissory note executed in favor of Ms. LaGrone was scheduled to begin in December 8, 2005. Additionally, the Order stated that any money collected from Mr. Smith would reduce the amount owed by Mrs. Smith and vice versa.

b) As of December 8, 2005, Mrs. Smith paid nothing on the promissory note, and was then in default for \$100,000, plus outstanding and accrued interest due.

c) On May 27, 2008, the court held a motions hearing on Mr. Smith's deferred sentence. Complainant filed a Victim's Impact Statement. The Judge closed the case and informed Mr. Smith that he was still obligated to pay the victims.

d) In February 2009, Ms. LaGrone ("Client") hired Respondent and the parties signed a hybrid contingency fee agreement. Complainant paid a \$2,500 retainer for expenses and fees.

e) On August 10, 2009, Respondent served judgment debtor interrogatories on Mr. and Mrs. Smith. Mr. Smith filed a motion objecting to responding for his wife because she was not a judgment debtor. Respondent filed a timely response to Mr. Smith's objection. On January 7, 2010, the court ordered Mr. Smith to answer questions about his wife. The Court further authorized a C.R.C.P. 69 examination of Mr. Smith.

f) On January 11, 2010, Respondent informed the Client of the Court's Order and that he planned "on being very aggressive now that the court gave us the order."

g) On July 27, 2010, Mr. Gary Smith answered certain Rule 69 interrogatories. Respondent served a follow up set of interrogatories and Mr. Gary Smith answered those interrogatories on August 16, 2010. From July to November 2010, Respondent and Mr. Smith emailed back and forth about Mr. Smith's lack of proper responses to both sets of interrogatories.

h) On March 16, 2011, Respondent informed the Client via email, "I apologize if there has been a lack of communication ... I will be reviewing your case and will be giving you an update. I think we have exhausted our options as to written discovery. I think it is time to pull him in for a deposition to determine exactly what his assets are. We may also start litigation against Mrs. Smith so we can get a judgment against her." On October 21, 2011, Respondent advised the Client via email that he thought they should pursue Mrs. Smith as she appears to be the only one making legitimate money.

i) On December 8, 2011, the statute of limitations period expired on the Client's claim to collect on the promissory note. Pursuant to C.R.S. 13-80-103.5(1)(a), all actions for enforcement of a promissory note must be brought within six years after the cause of action accrues. Respondent failed to realize that Client's cause of action accrued on December 8, 2005, and that the statute of limitations would prevent her from filing any collection action against Mrs. Smith after December 8, 2011.

j) Respondent incorrectly believed a three year breach of contract statute of limitations period applied to the Client's ability to collect on the promissory note. Respondent mistakenly believed the three year limitations period had run against the Client even before the Client hired Respondent.

k) On January 5, 2012, Respondent advised the Client via email, "I think the next thing we need to do is to go after Mrs. Smith as I think she is the only one working." Respondent then also incorrectly advised the Client that the breach of contract statute of limitations of three years had expired—even before the Client hired him.

l) Respondent believed certain language in the promissory note may have allowed the Client to defeat the statute of limitations defense. However, Respondent did no research to determine whether this language contained in the note would defeat the applicable statute of limitations. Respondent also failed to contact the debtor, Mrs. Smith, to discuss an extension of the time to pay or to get any agreement in writing regarding an extension of the payment period or tolling the statute of limitations.

m) On January 17, 2012, Respondent sent the Client an email suggesting she proceed against Mrs. Smith. Respondent discussed the statute of limitations but did not explain that the statute of limitations expired on December 8, 2011. Rather, Respondent mistakenly advised her the statute of limitations ran in 2008 before he was hired.

n) On January 25, 2012, Respondent emailed the Client suggesting that she go "after her [Mrs. Smith] so we keep them on edge. The longer you wait, the more you are given into the argument that it is too late to go after her." The Client then asked for a billing showing how much more she would need to pay Respondent in order to go forward.

o) On March 8, 2012, Respondent advised the Client to see if they could get Mr. Smith into court to testify as to his assets. He also stated, "I think you seriously also need to look at Mrs. Smith and whether you need to file suit against her so you can bring forth the argument that you either can sue her or not due to the time restraints. As we talked about before, it could be argued that your time to file has passed. However, the promissory note also appears to give you the ability to do so. Either way, you need to bring it so that she can assert the argument if she wants to."

p) Respondent did not file any action against Mrs. Smith.

q) On June 5, 2012, the Client sent Respondent an email stating, "How much do I need to pay you before you will continue with my case against Gary Smith? I am shocked at your lack of representation in this matter." On June 13, 2012, Respondent sent the Client an email apologizing. Respondent asked if the Client wanted him to proceed with a deposition of Mr. Smith so they could determine what assets he has. Respondent also stated, "As I remember that the other choice is to sue Mrs. Smith but we will have to deal with whether the statue [sic] of limitations has run or not."

r) The Client responded and told Respondent she wanted him to do "whatever he has to do to pursue both of them, including [his] idea to get around the statute of limitations problem."

s) Approximately three months later, on September 4, 2012, Respondent sent the Client an email attaching a demand letter to Mrs. Smith. Respondent states that if Mrs. Smith does not respond, he would file suit against her. As to Mr. Smith, Respondent states he would be completing legal research that week to bring him into a debtor's examination. Respondent advised the Client that he would keep her updated. Later that day, the Client advised Respondent she would send him a check for the filing fees for a lawsuit against Mrs. Smith that day.

t) On September 5, 2012, Respondent sent a letter to Mrs. Smith demanding payment on the promissory note and threatened a lawsuit. Mrs. Smith did not respond.

u) Three months later, on December 6, 2012, the Client sent an email to Respondent advising him that she had heard nothing from him since September 5, 2012. On December 14, 2012, Respondent apologized for the lack of a response but stated not much was going on. Respondent claimed he was attempting to serve Mrs. Smith. However, Respondent had not yet

drafted a complaint. Respondent told the Client he was trying to confirm a date for a hearing for Mr. Smith, but had been holding off setting that date until after they verified that they had the correct address for the Smiths.

v) Later that day, the Client responded, "I want to know exactly what your plans are in taking the necessary steps to get this matter to a hearing." Respondent did not respond.

w) On January 23, 2013, the Client sent Respondent an email asking what was going on with her case against the Smiths.

x) On February 11, 2013, the Client sent Respondent an email stating she had not heard from him since December 14, 2012, almost two months ago. In addition, the Client's husband left him two telephone messages and Respondent did not return those calls.

y) On February 12, 2013, Respondent advised the Client that he called the court that day to receive a court date for a Rule 69 examination. Respondent told the Client that upon receiving the date, he would then create a Subpoena and attempt to have Mr. Smith served. The Client then asked Respondent about Mrs. Smith and his alleged complaint to Mrs. Smith in September of 2012. The Client noted, "This [law suit] apparently did not happen." The Client again stated that she wanted to pursue the promissory note against Mrs. Smith.

z) On March 13, 2013, four years after the Client hired him, Respondent issued the Rule 69 Subpoena to Mr. Smith. On March 19, 2013, Respondent sent the Client an email advising he sent a process server to compel Mr. Smith to attend a deposition at his office. The server was unable to serve Mr. Smith.

aa) Three months later, on June 3, 2013, the Client expressed her dissatisfaction with Respondent and noted her husband phoned him three different times with no response. Respondent never filed any action against Mrs. Smith. Respondent then decided he could no longer represent the Client and returned her file to her.

bb) On January 24, 2014, the Client hired a new lawyer who filed suit against Mrs. Smith. Mrs. Smith's counsel sent a letter back stating the case must be dismissed immediately because the statute of limitations had run in December 2008. The Client's new lawyer agreed and dismissed the lawsuit.

cc) Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 1.1; 1.3; and 1.4(a) and (b).

7. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$91.00 (a copy of the statement of costs is attached hereto as Exhibit A) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from the date that the Presiding

Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of a six month suspension, all stayed upon successful completion of a two year probation, with conditions, may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness in the matter of the proposed disposition.

PRIOR DISCIPLINE

11. None.

ANALYSIS OF DISCIPLINE

12. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("*ABA Standards*"), §3.0, the Court should consider the following factors generally:

a. The duty violated: Respondent violated his duty to be competent to perform the services requested by the client, and his duty to be diligent in performing those services. Respondent also violated his duty to communicate and be candid with the client during his representation.

b. The lawyer's mental state: reckless with regard to the applicable statute of limitations; and knowing with regard to Respondent's failure to communicate with the client and neglect of the client.

c. The actual or potential injury caused by the lawyer's misconduct: Respondent caused actual injury to the Client because the Client lost her ability to file a collection action against Mrs. Smith and thus cannot obtain any judgment against the debtor based on Mrs. Smith's promissory note.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: a pattern of misconduct; multiple offenses; and substantial experience in the practice of law, ABA *Standards* §9.22(c), (d), and (i). Factors in mitigation include: absence of prior disciplinary record; full and free disclosure to the disciplinary board; and remorse, ABA *Standards* §9.32(a), (e), and (l).

13. Pursuant to ABA *Standard* § 4.42,

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

14. The Colorado Supreme Court has observed that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases." *In re Attorney F*, 285 P.3d 322, 327 (Colo. 2012), citing *In re Rosen*, 198 P.3d at 121. However, it is appropriate for the Hearing Board to consider prior Colorado Supreme Court decisions regarding the imposition of sanctions for attorney misconduct. *Id.* at 327.

In support of the sanction stipulated by the parties in this matter, the following cases are similar and support the agreed upon sanction. Some of the cases below are opinions and findings of a hearing board, or discipline imposed by the Presiding Disciplinary Judge after accepting a Conditional Admission of Misconduct. The parties cite these cases fully cognizant of the Supreme Court's language in *In re Roose*, 63 P.3d 43, 47 (Colo. 2003), in which Justice Coats wrote for the Court,

. . . [E]very case proceeds before a different panel and the outcome of that case cannot logically be controlled by cases decided by a previous Hearing Board. On the other hand, opinions issued by the Hearing Boards are officially published for the benefit of the profession in order to advise and instruct practicing attorneys of conduct that has resulted in discipline, the basis for and severity of the discipline, and the reasoning of the Hearing Board. In addition, the opinions of the Hearing Boards serve to instruct and guide, but not bind, future Hearings Boards in their decisions; and serve to inform the public of the proceedings.

The rationale of the Hearing Board in a particular case can neither serve as *stare decisis* precedent for future cases nor constitute the law of the jurisdiction. This court, and only this court, has the power to determine the law of this jurisdiction as applied in disciplinary proceedings. In the event a Hearing Board decision is not appealed to us, or for any other reason we do not address a legal interpretation of

the board, this court's silence cannot be understood as an implicit adoption of the Hearing Board's conclusions of law so as to be entitled to stare decisis effect in future proceedings.

Prior decisions of hearing boards and the PDJ are not cited herein in any way as being binding on the PDJ; rather they are cited as being helpful to determine the proportionality of the agreed upon sanction in this case.

The following cases support suspension in this case.

In *People v. Posselius*, 42 P.3d 95, 98 (Colo. O.P.D.J. 2002), the lawyer was suspended for six months, with the requirement of undergoing formal reinstatement proceedings, where the attorney was aware of his obligation to prepare and file a responsive pleading to complaint but he neglected to do so, his misconduct was direct cause of entry of default judgment against client, and the attorney aggravated that harm by failing to keep the client accurately informed about the case and by misinforming the client's representative about the status of the case. See also, *People v. Chappell*, 783 P.2d 838, 840 (Colo.1989) (attorney suspended for forty-five days for neglect of one client, failing to seek objectives of client, failing to pay funds over to client, performing initial work but failing to revise separation agreement, failing to submit separation agreement to court, and failing to cooperate with the Office of Attorney Regulation Counsel); *In re Gibson*, 991 P.2d 277, 279 (Colo. 1999) reinstatement granted sub nom. *People v. Gibson*, 99SA051, 2000 WL 33541632 (Colo. O.P.D.J. Feb. 14, 2000) (misconduct by attorney in neglecting a client's personal injury case, and then misrepresenting the status of the case to client for four years to cover up his neglect, warranted 30-day suspension from practice of law, in light of facts that client sustained no actual injury, and that during period of time in which misconduct, occurred attorney competently represented client in several additional matters).

15. Considering all of the factors described above, as applied to this case, a six month suspension, all stayed upon successful completion of a two year probation, with conditions, is an appropriate sanction. Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 251.7(a).

CONDITIONS

16. Probation. The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). Successful completion of all these terms shall stay the imposition of the six month suspension.

- a. Respondent shall be on probation for a two-year period of time.
- b. Mandatory Rule Condition. During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. See C.R.C.P. 251.7(b) ("The conditions [of probation]...shall include no further violations of the Colorado Rules of Professional Conduct").
- c. Respondent shall attend and successfully pass the one-day ethics school

sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved. Respondent shall register and pay the costs of ethics school within thirty-five (35) days of the date this Stipulation is approved. Attendance at ethics school will count as 8 general CLE credits, including 7 ethics credits. Respondent may obtain the registration form for the ethics school on-line at www.coloradosupremecourt.com, "Ethics School." Instructions for registering are on the registration form.

- d. Respondent shall undergo a law office audit as outlined in Exhibit B, attached hereto.
- e. Respondent shall successfully complete eight hours of CLE course(s) related to collection actions.

Respondent shall also be responsible for all costs of evaluation, treatment and supervision incurred as part of any condition of this probation. Failure to pay these costs prior to termination of probation shall constitute a violation of the probation.

17. Violation of Conditions. If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. See C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

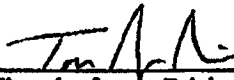
18. Successful Completion of Conditions. Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. See C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a six month suspension, all stayed upon successful completion of a two year probation, with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a six month suspension, all stayed upon successful completion of a two year probation, with conditions. The

parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be thirty-five (35) days after the date of entry of the order.

Timothy James Priebe, Respondent, and Erin R. Kristofco, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.



Timothy James Priebe
1465 Kelly Johnson Blvd. #200
Colorado Springs, CO 80920
Telephone: 719-388-8899
tpriebe@priebe-lawfirm.com
Respondent

STATE OF COLORADO)
)ss:
COUNTY OF El Paso)

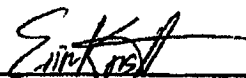
Subscribed and sworn to before me this 24th day of August, 2015, by
Timothy J. Priebe, the Respondent.

Witness my hand and official seal.

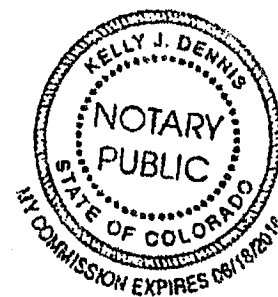
My commission expires: 06/18/2016



Notary Public



Erin R. Kristofco, #33100
Assistant Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
Telephone: (303) 928-7911
Attorney for the Complainant

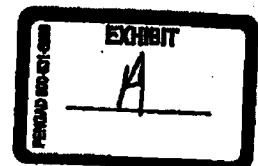


Statement of Costs

Timothy J. Priebe

14-1657

7/22/2015	Administrative Fee	<u>91.00</u>
	Amount Due	\$ 91.00

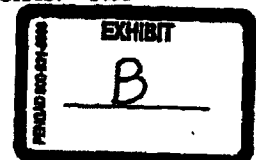


Law Office Audit

The respondent shall undergo a law office audit conducted by an experienced attorney, licensed to practice law in the State of Colorado, approved by the Office of Attorney Regulation Counsel. The respondent shall pay all costs of the audit.

Within 15 days from the date this stipulation is approved by the Presiding Disciplinary Judge, the respondent shall submit to the Office of Attorney Regulation Counsel the name of the proposed practice auditor. At the respondent's option, the respondent may submit more than one proposed name. The audit shall be completed no later than 60 days from the date this stipulation is approved by the Presiding Disciplinary Judge. The respondent shall be responsible for ensuring that the auditor submits a report concerning the audit to the Office of Attorney Regulation Counsel within 15 days of completion of the audit. The audit shall include the following:

1. A review of the respondent's reminder, or "tickler" systems, and all calendaring and case monitoring systems used in the respondent's office. The auditor shall verify that the respondent has a workable and effective tickler system and a dual calendar and case monitoring system in place.
2. A review of the respondent's billing system, including respondent's time keeping and time reporting systems, and systems for tracking and recording costs and expenses incurred on behalf of clients. The



auditor shall verify that the respondent has a workable and effective billing system which accurately, completely and timely communicates to clients the time, fees and costs incurred in their matter on a regular basis.

3. The respondent shall prepare a list of current and active client files, which will be reviewed by the auditing attorney, together with the respondent. The auditing attorney will take steps to verify that the list is complete.
4. The respondent and the auditing attorney shall discuss the respondent's caseload generally, and any concerns the respondent has with respect to any of his client matters. The respondent shall be responsible for ensuring that client confidentiality is maintained. Furthermore, respondent shall maintain the attorney client privilege throughout the duration of this agreement.
5. The auditor shall review a sampling of the respondent's open client files by reviewing the contents thereof. The respondent shall provide any additional information the auditing attorney may request concerning the files selected. The auditing attorney shall discuss with the respondent any concerns he or she may have concerning the files or the legal matter contained therein. This audit of the respondent's files is intended to increase the effectiveness of the auditing attorney in assisting the respondent to represent his clients completely and

diligently, and to communicate with his clients on a prompt and appropriate basis.

6. The auditing attorney will make, and the respondent will write down, specific suggestions necessary to assure that the respondent's caseload is being properly and professionally handled and that the respondent is diligently pursuing all client matters.
7. To the extent the auditor has concerns based upon any aspect of the law office audit conducted pursuant to the above-described procedures, the auditor shall make suggestions or recommendations to the respondent to alleviate such concerns and to help ensure prudent law office management procedures.
8. The auditing attorney shall prepare a report detailing the steps taken in the law office audit and verifying that he/she has completed all of the auditing tasks described above.

West's Colorado Revised Statutes Annotated
West's Colorado Court Rules Annotated
Colorado Rules of Professional Conduct (Appendix to Chapters 18 to 20) (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Cond., Rule 1.1

RULE 1.1. COMPETENCE

Currentness

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Credits

Repealed and readopted April 12, 2007, effective January 1, 2008. Comment amended effective April 6, 2016.

Rules of Prof. Cond., Rule 1.1, CO ST RPC Rule 1.1

Current with amendments received through January 15, 2017

End of Document

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West's Colorado Revised Statutes Annotated
West's Colorado Court Rules Annotated
Colorado Rules of Professional Conduct (Appendix to Chapters 18 to 20) (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Cond., Rule 1.3

RULE 1.3. DILIGENCE

Currentness

A lawyer shall act with reasonable diligence and promptness in representing a client.

Credits

Repealed and readopted April 12, 2007, effective January 1, 2008.

Rules of Prof. Cond., Rule 1.3, CO ST RPC Rule 1.3

Current with amendments received through January 15, 2017

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West's Colorado Revised Statutes Annotated
West's Colorado Court Rules Annotated
Colorado Rules of Professional Conduct (Appendix to Chapters 18 to 20) (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Cond., Rule 1.4

RULE 1.4. COMMUNICATION

Currentness

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Credits

Repealed and readopted April 12, 2007, effective January 1, 2008. Comment amended effective April 6, 2016.

Rules of Prof. Cond., Rule 1.4, CO ST RPC Rule 1.4

Current with amendments received through January 15, 2017

DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 16-J-15739

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

SUPPLEMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 3 columns: Person Served, Business-Residential Address, Fax Number. Row 1: Timothy J. Priebe, 1880 Office Club Pointe Ste. 2220 Colorado Springs, CO 80920, Electronic Address.

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS").

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 27, 2017

SIGNED: Kathi Palacios
Kathi Palacios
Declarant