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State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM

Counsel For The State Bar **Johnna G. Sack** **Senior Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2357** Bar # **270534**	Case Number (s) **16-N-13168-LMA** **17-C-03665-PEM** **PUBLIC MATTER**	(for Court's use) **FILED** **MAR 19 2018** **STATE BAR COURT CLERK'S OFFICE** **SAN FRANCISCO**
In Pro Per Respondent **Anthony Emmanuel Pagkas** **Pagkas & D'Anjou, L.L.P.** **777 N 1st Street, Ste 250** **San Jose, CA 95112** **(408) 291- 5401** Bar # **186112**	Submitted to: **Program Judge** **STIPULATION RE FACTS AND CONCLUSIONS OF LAW** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: **ANTHONY EMMANUEL PAGKAS** Bar # **186112** A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **December 11, 1996**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.

(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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, excluding the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(6) 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.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see 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 **14-O-01397. (See attachment, page 7 and Exhibit 1.)**

(b) ☒ Date prior discipline effective **February 19, 2016.**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct rule 3-700(D)(1) [failure to release client file], Rules of Professional Conduct rule 4-100(B)(3) [failure to provide client with accounting for legal fees], and Business and Professions Code section 6068(m) [failure to promptly respond to reasonable client status inquires and failure to notify client of adverse ruling].**

(d) ☒ Degree of prior discipline **90-day actual suspension.**

(e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below:

(See attachment, page 7 and Exhibit 2.)

(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 involved uncharged violations of the Business and Professions Code or the Rules of Professional Conduct. **(See attachment, page 7.)**

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

(11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.

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

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

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

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

Additional aggravating circumstances:

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

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

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(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:

Pre-trial Stipulation (See attachment, page 7).

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANTHONY EMMANUEL PAGKAS

CASE NUMBERS: 16-N-13168-LMA, 17-C-03665-PEM

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 California Rules of Court.

California Rules of Court rule 9.20 violation

FACTS:

1. On September 2, 2015, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in case number 14-O-01397.

2. On September 18, 2015, the Hearing Department of the State Bar Court filed an Order approving the Stipulation as modified and recommending to the California Supreme Court the discipline set forth in the Stipulation.

3. On January 20, 2016, the California Supreme Court filed Order number S230672 (State Bar case number 14-O-01397) ("Discipline Order"), which ordered that respondent be suspended from the practice of law for two years, execution of that period of suspension be stayed, and respondent be placed on probation for two years with an actual suspension of 90 days. Respondent received a copy of the Discipline Order shortly after it was filed. The Discipline Order became effective on February 19, 2016.

4. Pursuant to the Discipline Order, respondent was to comply with rule 9.20 of the California Rules of Court and file his declaration of compliance by March 30, 2016.

5. On June 3, 2016, respondent filed his rule 9.20 declaration.

CONCLUSIONS OF LAW:

6. By failing to file a declaration of compliance with California Rules of Court, rule 9.20, in conformity with requirements of rule 9.20(c) with the clerk of the State Bar Court by March 30, 2016, as required by Supreme Court Order number S230672, respondent willfully violated California Rules of Court, rule 9.20.

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Criminal Conviction
(Santa Clara County Superior Court Case No. C1504223)

PROCEDURAL BACKGROUND:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On June 10, 2016, the Santa Clara County District Attorney filed a criminal complaint in Santa Clara Superior Court, case number C1504223, charging respondent with one count of violating Penal Code section 243(e), battery on a cohabitant, a misdemeanor; one count of violating Penal Code section 273.5(a), inflicting corporal injury on a cohabitant, a misdemeanor; one count of violating Penal Code section 591.5, unlawful interference with wireless communication device with intent to prevent use of device to summon law enforcement of crime, a misdemeanor; two counts of violating Penal Code section 166(c)(1), violation of a protective order, a misdemeanor; one count of violating Penal Code section 273a(b), child endangerment, a misdemeanor; and one count of violating Penal Code section 594(a)/(b)(2)(A), vandalism, a misdemeanor.

3. On March 14, 2017, respondent pled guilty to one count of violating section 243(e), battery on a cohabitant; one count of violating section 591.5, unlawful interference with wireless communication device with intent to prevent use of device to summon law enforcement of crime; and one count of violating section 166(c)(1), violation of a protective order. The court accepted respondent's plea, suspended the imposition of sentence, and placed respondent on three years of formal probation. Respondent was ordered to complete 20 hours of volunteer work and to abstain from alcohol while on probation. He was also ordered to participate in counseling programs for substance abuse, parenting, and domestic violence. The other violations charged in the criminal complaint were dismissed in accordance with the plea agreement.

FACTS:

4. On January 11, 2015, at approximately 1:00 a.m., respondent and his girlfriend Jane Doe[1] were at a bar in San Jose. As they left the bar together, respondent grabbed Ms. Doe's arm and slapped her across the face. Respondent then grabbed the back of Ms. Doe's neck and forcefully escorted her away from the bar with his hand on his neck. A security guard who witnessed the incident intervened, separated respondent and Ms. Doe, and called the police. Officers responded and arrested respondent for domestic battery. The arrest did not lead to a criminal conviction, but the court issued a three-year "no contact" protective order, with Ms. Doe as the protected party and respondent as the restrained party.

5. In March of 2016, Ms. Doe and respondent were living together in Campbell, in violation of the protective order. On the morning of March 12, 2016, Ms. Doe arrived at the residence, and they began arguing. Ms. Doe walked away from respondent and went into the bathroom. Respondent followed Ms. Doe into the bathroom and threw her cell phone into the toilet to prevent her from calling 911. Respondent punched the shower wall, causing the tile to break

[1] Jane Doe is being used to protect the identity of the victim.

and lacerating his hand. The alteration occurred while respondent's two minor children were in the residence.

6. Respondent was under the influence of alcohol at the time of the incidents on January 11, 2015 and March 12, 2016.

CONCLUSIONS OF LAW:

7. The facts and circumstances surrounding the above-described violation do not involve moral turpitude but do involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)). Respondent has two prior records of discipline:

- In case 14-O-01397, discipline became effective on February 19, 2016. The Supreme Court suspended respondent for two years, stayed the suspension, and placed him on probation for two years with a 90-day actual suspension. Respondent was disciplined for violating Rules of Professional Conduct rule 3-700(D)(1) [failure to release client file], Rules of Professional Conduct rule 4-100(B)(3) [failure to provide client with accounting for legal fees], and Business and Professions Code section 6068(m) [failure to promptly respond to reasonable client status inquires and failure to notify client of adverse ruling]. (See Exhibit 1.)

- In case number 07-O-13322, discipline became effective on May 14, 2011. The Supreme Court suspended respondent for one year, stayed the suspension, and placed him on probation for two years with a 30-day actual suspension. Respondent was disciplined for violating Rules of Professional Conduct rule 3-110(A) [failure to perform competently], Rules of Professional Conduct rule 3-300 [improper pecuniary interest adverse to client], and Business and Professions Code section 6068(o)(3) [failure to report sanctions over $1,000]. (See Exhibit 2.)

Uncharged Violations of the Business and Professions Code (Std. 1.5(h)). In addition to filing his 9.20 declaration late, respondent failed to comply with other terms of his probation. Per the terms and conditions of respondent's disciplinary probation, he was required to contact the Office of Probation on or before March 20, 2016 to schedule a meeting with his probation officer to discuss the terms and conditions of his discipline. Respondent failed to contact the Office of Probation on or before March 20, 2016 to schedule his meeting. By not scheduling a meeting with his probation officer on or before March 20, 2016, respondent failed to comply with the conditions of his probation in willful violation of section 6068(k) of the Business and Professions Code.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation. Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving State Bar Court 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].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 26, 2017, the prosecution costs in this matter are $5,507. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

In the Matter of:	Case number(s):
ANTHONY EMMANUEL PAGKAS	16-N-13168-LMA 17-C-03665-PEM

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

Date	Respondent's Signature	Print Name
2-26-18		Anthony E. Pagkas
Date	Respondent's Counsel Signature	Print Name
2-26-18		Johnna G. Sack
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
ANTHONY EMMANUEL PAGKAS	16-N-13168-LMA 17-C-03665-PEM

ALTERNATIVE DISCIPLINE PROGRAM 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:

- [x] The stipulation as to facts and conclusions of law is APPROVED.
- [ ] The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- [ ] All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

March 19, 2018
Date

Pat E. McElroy
PAT E. MCELROY
Judge of the State Bar Court

EXHIBIT 1

(State Bar Court No. 14-O-01397)

S230672

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ANTHONY EMMANUEL PAGKAS on Discipline

The court orders that Anthony Emmanuel Pagkas, State Bar Number 186112, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Anthony Emmanuel Pagkas is suspended from the practice of law for the first 90 days of probation;

2. Anthony Emmanuel Pagkas must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on September 15, 2015 and;

3. At the expiration of the period of probation, if Anthony Emmanuel Pagkas has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Anthony Emmanuel Pagkas must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Anthony Emmanuel Pagkas must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

CANTIL-SAKAUYE

Chief Justice

I, Frank A. McGuire, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.
Witness my hand and the seal of the Court this

____ day of JAN 20 2016 20____

Clerk

By:_____
Deputy

(Do not write above this line.)

ORIGINAL

State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION

Counsel For The State Bar	Case Number(s):	For Court use only
Robert A. Henderson **Supervising Senior Trial Counsel** **180 Howard St.** **San Francisco, CA 94105** **(415) 538-2385** Bar # **173205**	**14-O-01397** **PUBLIC MATTER**	FILED SEP 18 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent **Anthony Emmanuel Pagkas** **Pagkas & D'Anjou, LLP** **777 N. First St., Suite 250** **San Jose, CA 95112** **(408) 291-5401** Bar # **186112**	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **ANTHONY EMMANUEL PAGKAS** Bar # **186112** A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **December 11, 1996.**

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
- ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

(1) ☒ **Prior record of discipline**

(a) ☒ State Bar Court case # of prior case **07-O-13322 [S190341]**

(b) ☒ Date prior discipline effective **May 14, 2011**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules 3-110(A) - Failure to perform competently; and 3-300 - Improper pecuniary interest adverse to client; Business and Professions Code sections 6068(a) - Breach of fiduciary duty to former client; and 6068(o)(3) - Failure to report sanction.**

(d) ☒ Degree of prior discipline **One year stayed suspension, two years of probation with 30 days actual suspension from the practice of law.**

(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.

(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 to Stipulation at p. 8.

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

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

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

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

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(l) & 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:

Pre-filing Stipulation - See Attachment to Stipulation at p. 9.

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

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 **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)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of ***90 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:

(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:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANTHONY EMMANUEL PAGKAS

CASE NUMBER: 14-O-01397

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 14-O-01397 (Complainant: Jenny Wolfes and David Koehler)

FACTS:

1. Diamond SJ Enterprises, Inc. ("Diamond SJ") owns and operates a nightclub in San Jose.

2. Beginning in 2005 and continuing into 2012, Diamond SJ, and its principals Jenny Wolfes ("Wolfes") and Dave Koehler ("Koehler") employed Anthony Pagkas ("Respondent") for a variety of legal matters. Respondent did not have a written retainer agreement with Diamond SJ.

3. During the course of respondent's employment, Diamond SJ paid at least $201,375.78 in legal fees. The billing arrangement between respondent and Diamond SJ was informal in nature. Respondent would request payment, which Diamond SJ would pay without requiring an invoice for services rendered.

4. On May 5, 2011, one of the matters respondent worked on, *Diamond SJ Enterprise, Inc. v. City of San* Jose, case no. 1-07-CV081095, concluded by way of an adverse ruling on a Motion for Summary Judgment, filed by the City of San Jose. Respondent failed to promptly inform Diamond SJ or its principals Wolfes and Koehler of the adverse ruling. On June 12, 2011, Diamond SJ learned of the adverse ruling by consulting with a different attorney.

5. From May 14, 2011 through June 13, 2011, respondent was actually suspended from the practice of law as a result of discipline imposed in State Bar case no. 07-O-13322 [S190341]. It is during this timeframe that respondent's attorney client relationship with Diamond SJ began to deteriorate.

6. From late 2010 through early 2012, Wolfes and Koehler on behalf of Diamond SJ made multiple requests of respondent asking for information related to ongoing legal issues Diamond SJ had with the City of San Jose, the San Jose Police Department and other entities. Respondent's responses to the requests were non-specific generalizations, which did not provide any substantive information. Wolfes and Koehler eventually started to question respondent regarding the fees already paid. Specifically Wolfes and Koehler asked respondent for billing information and their files for prior work performed. Respondent was responsive to the e-mail communications, but never provided a substantive response to the inquiries. The multiple emails between Wolfes, Koehler and respondent, detail the deterioration of the attorney client relationship.

7. Between August 9, 2011 and February 16, 2012, Koehler, on behalf of Diamond SJ, on at least 12 occasions demanded billing information, copies of the file(s), an accounting for the fees paid and a detailed explanation of the work respondent performed. Respondent agreed to provide the material, but he did not follow through with the information.

8. Respondent never provided an accounting for the fees paid.

9. Respondent never provided a detailed explanation of the work performed.

10. Respondent never provided the billing information.

11. In July 2015, respondent provided the files to Diamond SJ. The delay in providing the files to Diamond SJ made them of little to no use.

CONCLUSIONS OF LAW:

12. By failing to release the client files to Diamond SJ until July 2015, respondent wilfully failed to promptly release to the client, the client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

13. By failing to provide an accounting to Diamond SJ for the services performed and the $201,375.78 paid in legal fees, respondent wilfully failed to render an appropriate accounting to the client regarding those funds, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

14. By failing to substantively respond to the multiple requests for a status update made by Diamond SJ, respondent failed to promptly respond to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

15. By failing to promptly inform Diamond SJ of the adverse ruling on the Motion for Summary Judgment in *Diamond SJ Enterprise, Inc. v. City of San* Jose, case no. 1-07-CV081095, respondent failed to inform a client of a significant development in a matter in which respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has a prior record of discipline in case no. 07-O-13322 [S190341]. The discipline became effective on May 14, 2011, for violations of Rules of Professional Conduct, rule 3-110(A) [failure to perform competently]; 3-300 [improper pecuniary interest adverse to a client]; and Business and Professions Code section 6068(o)(3) [failure to report sanctions in excess of $1,000]. The Supreme Court suspended respondent for one year, stayed the suspension and placed him on three years of probation, conditioned on a 30 day actual suspension from the practice of law.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's failure to communicate, account and promptly provide the file demonstrate multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to the filing of a Notice of Disciplinary Charges, thereby saving State Bar Court time a resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

In this matter, respondent committed multiple acts of professional misconduct. 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 2.2 which provides that an actual suspension of three months is appropriate for commingling or failing to promptly pay out entrusted funds, while suspension or reproval is appropriate for any other violation of rule 4-100. In this matter, Standard 2.2(b) provides sanctions ranging from reproval to actual suspension.

The gravamen of respondent's misconduct is not limited to his failure to render an accounting, but rather the persistent nature of his refusal to provide his client with information regarding the client's matters. Therefore discipline at the higher end of the range identified by Standard 2.2(b) would be appropriate.

In the current matter respondent has a significant aggravating factor, a prior record of discipline, coupled with multiple acts of misconduct, which is minimally tempered by respondent's entering into this pre-filing stipulation. On balance the aggravating factors significantly outweigh the mitigation. Standard 1.8(a) states: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Here, respondent's prior misconduct is neither remote, nor minor. Therefore the discipline imposed should be greater than the 30 day actual suspension imposed on May 14, 2011. As respondent's conduct does not appear to have harmed his client, a 90-day actual suspension would follow the Standards and adequately protect the public and the profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 21, 2015, the prosecution costs in this matter are $3,066. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

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

(Do not write above this line.)

In the Matter of:	Case number(s):
ANTHONY EMMANUEL PAGKAS	**14-O-01397**

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.

Date	Respondent's Signature	Print Name
Sept. 2, 2015		Anthony E. Pagkas
Date	Respondent's Counsel Signature	Print Name
9/8/15		Robert A. Henderson
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
ANTHONY EMMANUEL PAGKAS	14-O-01397

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 1 of the Stipulation, at paragraph A.(3), line 3, "10 pages" is deleted, and in its place is inserted "11 pages".
2. On page 8 of the Stipulation, under the heading "Aggravating Circumstances," on line 6 of the paragraph concerning respondent's prior record of discipline, "three years of probation" is deleted, and in its place is inserted "two years of probation".
3. On page 9 of the Stipulation, under the heading "Mitigating Circumstances," line 3, "a" is deleted, and in its place is inserted "and".

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.)**

September 18, 2015
Date

Pat McElroy
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 San Francisco, On September 18, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

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

ANTHONY E. PAGKAS
PAGKAS & D'ANJOU, L.L.P.
777 N 1ST ST STE 250
SAN JOSE, CA 95112

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

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 18, 2015.

Lauretta Cramer
Case Administrator
State Bar Court

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST October 12, 2016

State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

EXHIBIT 2

(State Bar Court No. 07-O-13322)

S190341

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ANTHONY EMMANUEL PAGKAS on Discipline

The court orders that Anthony Emmanuel Pagkas, State Bar Number 186112, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Anthony Emmanuel Pagkas is suspended from the practice of law for the first 30 days of probation;

2. Anthony Emmanuel Pagkas must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on December 2, 2010; and

3. At the expiration of the period of probation, if Anthony Emmanuel Pagkas has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Anthony Emmanuel Pagkas must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

CANTIL-SAKAUYE

Chief Justice

I, Frederick K. Ohlrich, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office

Witness my hand and the seal of the Court this

14 day of April 2011

Clerk

By: _____

Deputy

(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar	Case Number (s)	(for Court's use)
Robin Brune Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 Bar # 149481	07-O-13322	PUBLIC MATTER FILED DEC 0 2 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Anthony Pagkas 75 E. Santa Clara Street, Suite 1210 San Jose, California 95113 Bar # 186112	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: Anthony Pagkas Bar # 186112 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted December 11, 1996.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 11 pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☐ costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline** [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case

(b) ☐ Date prior discipline effective

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. Respondent's client suffered a significant default judgment.

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

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

(7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

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

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

(3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Respondent has been cooperative with the State Bar.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.

(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 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

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 present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) 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 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)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of thirty days.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

(1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), 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:

(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:

☐ Substance Abuse Conditions ☒ Law Office Management Conditions

☐ Medical Conditions ☐ 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 321(a)(1) & (c), 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:** See attachment regarding modified law office management conditions.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ANTHONY PAGKAS

CASE NUMBER(S): ET AL. 07-O-13323

FACTS AND CONCLUSIONS OF LAW.

In 2003, Ed Mumbert ("Mumbert") hired Pagkas to defend him in *Styles v. Mumbert*, Case no. 1-03-CV-002071, filed in Superior Court, County of Santa Clara. Respondent failed to timely respond to interrogatories. As a result of respondent's failure to timely respond to interrogatories, in January, 2005, the plaintiff succeeded in obtaining terminating sanctions against Mumbert. Mumbert terminated respondent and hired a second attorney to set aside the terminating sanctions order. However, the Court denied a set-aside and entered a default judgment against Mumbert in the sum of $730,466.000.

Thereafter, Mumbert sued respondent for malpractice, *Mumbert v. Pagkas*, case no 105CV053326, also filed in Superior Court, County of Santa Clara. Respondent filed a cross-complaint for attorney's fees.

At the same time that the malpractice suit was going forward, Mumbert was also appealing the adverse ruling in the *Styles v. Mumbert* case. This was case number H029767, filed in the Court of Appeal, Sixth Appellate District.

The parties met to discuss settlement, but no resolution was reached. Thereafter, respondent purchased, from Styles, the rights to the judgment. Respondent sought to then negotiate with Mumbert, and obtain, from Mumbert, consideration for the judgment that respondent now held against Mumbert. Respondent sought a significant sum from Mumbert, originally asking for around $100,000 in the hopes of getting at least a third of that amount. Respondent also sought to intervene as the real party in interest in the pending appeal, by filing pleadings in the Sixth Court of Appeal asking to be substituted into the case in the stead of Styles. In his pleadings, respondent indicated that he should be allowed to step in as a respondent in order to "offset any [future malpractice] award."

On July 15, 2008, the Court of Appeal issued a published decision (164 Cal. App. 4th 1163), denying respondent's motion to be substituted into the suit in the stead of Styles. The Court found that respondent had violated his fiduciary duties to Mumbert as his former client. The Court sanctioned respondent the sum of $5,260.00, payable to Mumbert.

Respondent did not report the sanctions order to the State Bar.

CONCLUSIONS OF LAW

1. Respondent failed to perform with competence, in reckless, repeated, and willful violation of Rules of Professional Conduct, rule 3-110(A) when he failed to timely respond to interrogatories, resulting in the default judgment against Mumbert.

2. Respondent maintained an adverse, pecuniary interest, adverse to his client, in willful violation of Rules of Professional Conduct, rule 3-300, when he, without his client's knowledge or consent, purchased the judgment against Mumbert from Styles, and thereafter sought to obtain funds from Mumbert in satisfaction of the judgment.

3. Respondent violated Business and Professions Code, section 6068(o), when he failed to report the adverse ruling, and sanctions against him, to the State Bar.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 3, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of $2,258.00, the prosecution costs in this matter are $1,983.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct, Standard 2.8, mandates suspension for a willful violation of Rules of Professional Conduct, rule 3-300, unless the extent of the member's misconduct and the harm are minimal. The Standards for Attorney Sanctions for Professional Misconduct, Standard 2.6 mandates suspension for a willful violation of Business and Professions Code, section 6068. Case law demonstrates a range of discipline from reproval to two-years actual.

> In a 3-300 case in which the attorney did not have a prior record of discipline, the discipline has encompassed a public reproval for a single instance of holding an interest adverse to a client without proper notice and consent (*Connor v. State Bar, supra,* 50 Cal.3d 1047); thirty-days actual suspension for rule 3-300 violations, mismanagement, and intentional misrepresentations involving two trusts (*Schneider v. State Bar, supra,* 43 Cal.3d 784); and a two-year actual suspension for a business transaction with a client without notice and consent and the improper solicitation of a client, coupled with a client abandonment, failure to communicate with his clients, and failure to return client property and advanced fees promptly. (*Rose v. State Bar, supra,* 49 Cal.3d 646.)

In *In the Matter of Fonte*, (1994) 2 Cal State Bar Ct. Rptr. 752, at 765. the attorney received a sixty day actual suspension, one year of stayed suspension, and two years of probation, for, among other misconduct, obtaining an adverse interest to his client in a trust matter. In *In Re Silverton* (2004) 4 Cal. State Bar Ct. Rptr. 643, the attorney received sixty days of actual suspension for an improper business transaction with his client: he was paying his clients a set amount for the right to negotiate their medical liens, if he successfully negotiated the lien, he would keep the profit from the negotiation. In *In Matter of Hultman* (1995) 3 Cal. State Bar Ct. Rptr. 297, the attorney made two loans to himself as trustee of a testamentary trust, using up most of the corpus of the trust, in conflict with his client. The Court imposed sixty days of actual suspension, three-years stayed.

In the present case, respondent's lack of discipline and his cooperation in reaching this stipulation was taken into consideration.

STATE BAR ETHICS SCHOOL

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES

See Attachment.

Respondent admits that the aforementioned facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

In the Matter of	Case number(s):
Anthony Pagkas	**07-O-13323**
A Member of the State Bar	

Law Office Management Conditions

a. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.

b. ☒ Within days/ months/**one** years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **3** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)

c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

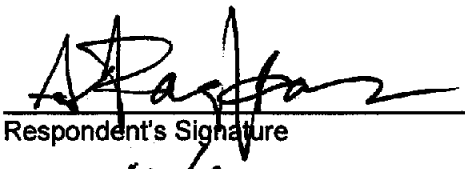
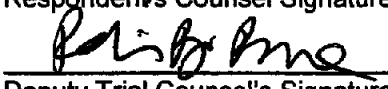
The above mentioned section "b" is modified to require that respondent complete three MCLE hours in conflicts.

(Do not write above this line.)

In the Matter of **ANTHONY PAGKAS**	Case number(s): **07-O-13323**

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

11.13.10 Date	 Respondent's Signature	Anthony Pagkas Print Name
Date	N/A Respondent's Counsel Signature	N/A Print Name
11/17/2010 Date	 Deputy Trial Counsel's Signature	Robin B. Brune Print Name

(Do not write above this line.)

In the Matter Of **ANTHONY PAGKAS**	Case Number(s): **07-O-13323**

ORDER

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

☑ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

☑ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), 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.)**

Dec. 2, 2010
Date

Judge of the State Bar Court
LUCY ARMENDARIZ

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 San Francisco, on December 2, 2010, 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 San Francisco, California, addressed as follows:

ANTHONY E. PAGKAS
LAW OFC ANTHONY E PAGKAS
75 E SANTA CLARA ST #1210
SAN JOSE, CA 95113

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

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 2, 2010.

Bernadette C.O. Molina
Case Administrator
State Bar Court

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST September 16, 2016

State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 San Francisco, on March 19, 2018 I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

☒ by personally delivering such documents to the following individuals at 180 Howard Street, 6th Floor, San Francisco, California 94105-1639:

LAURA HUGGINS
ANTHONY PAGKAS

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 19, 2018.

Lauretta Cramer
Court Specialist
State Bar Court