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| State Bar Court of California Hearing Department Los Angeles DISBARMENT | | |
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| Counsel For The State Bar Stacia L. Johns Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1004 Bar # 292446 | Case Number(s): 16-N-17689 | For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED JUN 16 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> |
| In Pro Per Respondent Lee Durst 220 Newport Center Drive 11285 Newport Beach, CA 92660 Bar # 69704 | Submitted to: Settlement Judge | |
| In the Matter of: LEE HUMPHREY DURST Bar # 69704 A Member of the State Bar of California (Respondent) | STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **September 13, 1976**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are 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."



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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 to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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 15-O-10512, 15-O-10860, 15-O-12681, 15-O-15120
See attachment to Stipulation at page 7.
- (b) ☒ Date prior discipline effective August 28, 2016
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 4-100(A), 4-100(B)(1), 4-100(B)(3), 4-100(B)(4); Business and Professions Code sections 6068(i), 6068(o)(3), 6103, 6106
- (d) ☒ Degree of prior discipline Three-year suspension, stayed; four-year probation with conditions; two-year actual suspension and until compliance with Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1)
- (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.

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- (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) ☐ **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.

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- (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 subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pre-filing Stipulation: see attachment, page 7

Community Service/Pro Bono Work: see attachment, page 7

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: LEE DURST
CASE NUMBER: 16-N-17689

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-N-17689

FACTS:

1. On July 29, 2016, the Supreme Court issued order S234491 (State Bar Case Nos. 15-O-10512; 15-O-10860; 15-O-12681; and 15-O-15120), effective August 28, 2016, which imposed discipline as to respondent consisting of a three years' stayed suspension, four years' probation with conditions, including two years' actual suspension and until respondent complied with standard 1.2(c)(1) ("the disciplinary order").
2. Pursuant to the disciplinary order, respondent was required to file with the clerk of the State Bar Court the declaration ("compliance declaration") required under subdivision (c) of California Rules of Court, rule 9.20 ("rule 9.20") by October 7, 2016.
3. On July 29, 2016, the Clerk of the Supreme Court properly served respondent with a copy of the disciplinary order. Respondent received the disciplinary order.
4. On August 9, 2016, Probation Deputy Michael Kanterakis from the State Bar Office of Probation ("Probation") emailed a letter to respondent at both of his membership records email addresses. The letter notified respondent of the effective date of his suspension and reminded him of the deadline to file his compliance declaration. The same day, respondent sent a reply email to Probation confirming he received the letter from Probation.
5. Respondent failed to file a compliance declaration with the clerk of the State Bar Court by October 7, 2016.
6. To date, respondent has not filed the compliance declaration.

CONCLUSIONS OF LAW:

7. By failing to file with the clerk of the State Bar Court an affidavit showing that he had fully complied with rule 9.20, California Rules of Court, as required by subdivision (c) of rule 9.20, within the time prescribed by Supreme Court Order number S234491, Respondent willfully violated rule 9.20, California Rules of Court.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline in connection with a stipulation in State Bar Court case numbers 15-O-10512, 15-O-10860, 15-O-12681, and 15-O-15120 (S234491). Effective August 28, 2016, discipline was imposed as to respondent consisting of a three years' stayed suspension, four years' probation with conditions, including a two years' actual suspension and until respondent complied with standard 1.2(c)(1). Respondent was also ordered to comply with rule 9.20. In three client matters and one State Bar investigation, respondent stipulated to misconduct for three counts of failure to account, and one count each for grossly negligently misappropriating \$10,049.55 from one client, making a misrepresentation to one client's insurance carrier, failing to maintain client funds in respondent's client trust account ("CTA"), failing to deposit client funds in respondent's CTA, failing to notify client of receipt of client funds, failing to promptly pay client funds, failure to obey a court order, failure to report judicial sanctions, and failure to cooperate in a State Bar Investigation. Respondent made restitution to the client in the amount of \$10,049.55 after the initiation of State Bar proceedings. The misconduct occurred between December 2, 2013, and January 29, 2016. In aggravation, respondent engaged in multiple acts of misconduct. In mitigation, respondent had no prior record of discipline over 37 years of practice prior to the misconduct, had shown remorse, provided evidence of good character, and entered into a pretrial stipulation.

MITIGATING CIRCUMSTANCES.

Community Service/Pro Bono Work: Respondent served as Judge Pro Tem for the Orange County Superior Court for approximately 22 years. Respondent has also performed pro bono legal services in numerous civil rights and criminal cases. Additionally, respondent has volunteered with University of California Irvine Moot Court Program for approximately three years. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [civic service such as charitable work can be mitigating as evidence of good character].)

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 Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re 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 the present matter, respondent failed to timely file his rule 9.20 compliance declaration. Under rule 9.20, a suspended member’s willful failure to comply with the provisions of rule 9.20 is cause for disbarment or suspension. Accordingly, the appropriate level of discipline in this case is either actual suspension or disbarment.

Standard 1.8(a) states that when a respondent has a single prior record of discipline, the sanction for the current misconduct must be greater than the previously-imposed discipline. An exception may apply when the prior discipline is remote in time and the previous misconduct was not serious. Here, the prior discipline involved numerous charges in multiple client matters, including two counts of moral turpitude. The disciplinary order became effective on August 28, 2016. Therefore, the prior discipline was not remote in time and involved serious misconduct. The previous discipline was an actual suspension of two years and until respondent could prove rehabilitation under standard 1.2(c)(1).

The sanction recognized and generally imposed by the Supreme Court in rule 9.20 wilful violation cases is disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) When it has not been imposed, the attorney had complied with the notification requirement to all their clients, participated in the disciplinary process, and presented substantial mitigating evidence regarding the noncompliance and their present good character. Here, respondent has not filed a rule 9.20 compliance declaration indicating whether he satisfied the notice requirements of rule 9.20. Respondent’s lack of compliance demonstrates an inattention to important duties to his clients, the courts, and the public, as well as an inability to conform his conduct to his ethical responsibilities.

In aggravation, respondent has a prior record of discipline involving numerous charges in multiple client matters, including two counts of moral turpitude. In mitigation, respondent served as Judge Pro Tem for the Orange County Superior Court for approximately 22 years, volunteered with University of California Irvine Moot Court Program for approximately three years, and performed pro bono legal services in numerous civil rights and criminal cases. Despite respondent’s mitigation, disbarment is warranted under rule 9.20 and standard 1.8(a).

In *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, the Review Department found that an attorney’s willful violation of a court order requiring his compliance with rule 9.20 was

sufficient grounds for disbarment where the evidence in mitigation was not compelling. In *Esau*, the attorney filed his rule 9.20 declaration 104 days past the deadline and presented evidence in mitigation at trial, which the Review Department deemed to be non-compelling.

Here, respondent failed to file his compliance declaration, thereby committing more egregious misconduct than the attorney in *Esau*. Although respondent provided evidence in mitigation, the mitigation is not sufficiently compelling. Therefore, disbarment in the present matter is warranted.

Respondent's prior disciplinary matters and his present misconduct demonstrate an unwillingness or inability to conform to ethical responsibilities. In light of the foregoing, disbarment will best serve the goals of protecting the public, the courts, and the legal profession; maintaining high professional standards for attorneys; and preserving 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 8, 2017, the discipline costs in this matter are \$2,673. 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.

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| In the Matter of: Lee Humphrey Durst | Case number(s): 16-N-17689 |
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SIGNATURE OF THE PARTIES

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

5/25/2017
Date

5/31/2017
Date


Respondent's Signature

Lee Durst
Print Name


Deputy Trial Counsel's Signature

Stacia L. Johns
Print Name

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| In the Matter of: Lee Humphrey Durst | Case Number(s): 16-N-17689 |
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DISBARMENT ORDER

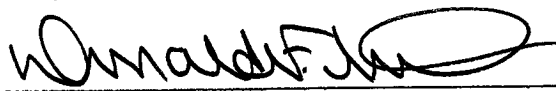
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

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

Respondent Lee Humphrey Durst is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

6/16/17
Date


DONALD F. MILES
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 16, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER
APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

LEE HUMPHREY DURST
220 NEWPORT CENTER DR
11285
NEWPORT BEACH, CA 92660

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

STACIA L. JOHNS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 16, 2017.


Louisa Ayrapetyan
Case Administrator
State Bar Court