

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Jennifer Kishimizu Pinney State Bar of California Office of Chief Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1349 Bar # 280869	Case Number(s): 16-O-10738	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED JUN 27 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Arthur L. Margolis Margolis & Margolis LLP 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: GARY ALLEN QUACKENBUSH Bar # 137752 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 7, 1988.**
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **two billing cycles following the effective date of the Supreme Court order in this matter.** (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 **00-C-11716**
 - (b) Date prior discipline effective **October 10, 2001**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6068(a)**
 - (d) Degree of prior discipline **Public Reproval**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property..

(Do not write above this line.)

- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See Attachment, see page 9.**
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(Do not write above this line.)

- (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

Candor and Cooperation: See Attachment, page 9.
Good Character: See Attachment, page 10.
Community Service: See Attachment, page 10.
Prefiling Stipulation: See Attachment, page 10.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one (1) year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(Do not write above this line.)

- (3) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) **Other Conditions:**

10. On February 5, 2014, respondent's paralegal Walter Hernandez ("Hernandez") emailed a copy of a letter from CitiMortgage to the Lindsleys discussing mortgage options. Mr. Lindsley asked paralegal Hernandez, "Is this just FYI or do we need to do something?" Paralegal Hernandez replied, "FYI."

11. On March 18, 2014, Mr. Lindsley emailed respondent's paralegal Hernandez that he had received mail that their home was being auctioned or foreclosed again. Mr. Lindsley expressed concern and was unsure why he was receiving the letters. Respondent's paralegal Hernandez received Mr. Lindsley's email, did not respond, and failed to forward the message to respondent. Respondent failed to respond to his client's email because he did not properly supervise his paralegal to ensure that respondent received his client's communications.

12. On March 19, 2014, CitiMortgage filed a Motion for Relief from Automatic Stay in the Lindsleys' bankruptcy proceeding. The motion was filed due to the Lindsleys' failure to make post-petition mortgage payments. However, the Lindsleys had made their post-petition payments, but they had been submitted late. CitiMortgage served respondent and the Lindsleys with the Motion for Relief from Automatic Stay by first-class mail.

13. On March 19, 2014, an alert from the Bankruptcy Court regarding CitiMortgage's filing of its Motion for Relief from Automatic Stay was emailed to respondent at his State Bar membership record email address. The email alert notified respondent that an opposition on behalf of his clients was due. Respondent received this email.

14. Respondent's paralegal Hernandez had also received an email alert from the Bankruptcy Court regarding CitiMortgage's filing of its Motion for Relief from Automatic Stay on March 19, 2014.

15. Respondent failed to oppose CitiMortgage's Motion for Relief from Automatic Stay or to take any action on his clients' behalf regarding the motion. Respondent was confused regarding the two motions for relief from automatic stay and had not performed with respect to CitiMortgage's motion due to his mistaken belief that the matter had been handled previously.

16. On April 8, 2014, the Bankruptcy Court granted CitiMortgage's uncontested Motion for Relief from Automatic Stay.

17. On April 28, 2014, respondent's paralegal received an email alert from the Bankruptcy Court that a Proof of Service for the Order Regarding the Motion for Relief from Stay had been filed. An alert was also emailed to respondent at his State Bar membership record email address, which Respondent received.

18. Respondent failed to notify his clients that CitiMortgage's Motion for Relief from Automatic Stay was granted and that their house had gone back into foreclosure.

19. On April 17, 2014, Mr. Lindsley emailed respondent's paralegal Hernandez that he had received more letters from CitiMortgage, believed that they had caught up on their arrearages and asked if there were any new developments in his case. Respondent's paralegal received Mr. Lindsley's email, did not respond, and failed to forward the message to respondent. Respondent failed to respond to his client's email because he did not properly supervise his paralegal to ensure that respondent received his client's communications.

20. On April 29, 2014, Mr. Lindsley emailed respondent's paralegal Hernandez that he had received more letters from CitiMortgage and that he was getting worried. Mr. Lindsley asked to notify him if everything was okay. Respondent's new paralegal Collin Davis ("Davis") responded: "As long as you stay current on your mortgage payment and your bankruptcy trustee payment then there will be no problems." Respondent's paralegal Davis failed to mention that the Bankruptcy Court had granted CitiMortgage's Motion for Relief from Automatic Stay and that their house was back in foreclosure.

21. On June 2, 2014, the Lindsleys received advertisements in the mail stating that their home had been sold. They immediately called respondent's office and requested a meeting with respondent and for respondent to call them, but respondent failed to respond.

22. Also on June 2, 2014, Mr. Lindsley sent three emails to respondent's secretary about the letters and the information that they had received regarding the discharge of their bankruptcy matter. Respondent's secretary received Mr. Lindsley's emails, did not respond, and failed to forward the message to respondent. Respondent failed to respond to his client's email because he did not properly supervise his secretary to ensure that respondent received his client's communications.

23. On June 4, 2014, respondent's paralegal Davis spoke with Mrs. Lindsley over the phone who acknowledged that they had missed some post-petition payments and were upset over losing their home because they had caught up on their post-petition payments prior to the foreclosure and CitiMortgage had misapplied their post-petition payments.

24. When Mrs. Lindsley asked respondent's paralegal Davis what they should do about their bankruptcy proceeding and their car loan payments, respondent's paralegal, at the direction of respondent, advised her to stop making their payments.

25. The Lindsleys later discovered after the fact that on May 28, 2014, their home had been sold at auction. They hired a real estate attorney to help them through the foreclosure process.

26. On July 9, 2014, Mrs. Lindsley emailed respondent regarding respondent's lack of communication and her frustration with respondent's representation. She expressed how they were upset that they were not informed regarding CitiMortgage's Motion for Relief from Automatic Stay, the effect of the motion and that their house had been foreclosed on. Mrs. Lindsley asked several questions regarding their case and respondent's representation and requested a response. Respondent received Mrs. Lindsley's email, but he failed to respond.

27. On September 8, 2014, the bankruptcy trustee filed a Motion to Dismiss the case. The Motion was not contested by respondent.

28. On October 24, 2014, the Bankruptcy Court filed an Order on Noncontested Motion Dismissing Chapter 13 Case based on material breach in that the debtor failed to make plan payments to the Trustee. Accordingly, respondent's misconduct was not the sole reason for the foreclosure of the Lindsleys' property.

29. On January 24, 2016, the Lindsleys submitted their complaint with the State Bar.

30. On March 16, 2017, respondent issued a refund of \$1,800.00 to the Lindsleys.

CONCLUSIONS OF LAW:

31. By failing to supervise his non-attorney employee who failed to calendar CitiMortgage's Motion for Relief from Automatic Stay, failing to supervise his non-attorney employee who improperly advised respondent's clients that there were no problems regarding their bankruptcy case and failed to inform them that regarding CitiMortgage's Motion for Relief from Automatic Stay, and failing to take subsequent remedial action on behalf of his clients after discovering CitiMortgage's Motion for Relief from Automatic Stay had been granted, respondent repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct rule 3-110(A).

32. By failing to inform his clients that CitiMortgage filed a Motion for Relief from Automatic Stay in the Lindsleys' bankruptcy case on March 19, 2014, respondent failed to file an opposition to the Motion for Relief from Automatic Stay, the uncontested Motion for Relief from Automatic Stay was granted on April 8, 2014, and the Lindsleys' home was sold at auction on May 28, 2014, respondent failed to keep his clients reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

33. By failing to respond to four emails containing reasonable status inquiries made by respondent's clients between April to July 2014 in a matter in which respondent had agreed to provide legal services, respondent failed to respond to client inquiries in willful violation of Business and Professions Code, section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent was admitted to the California State Bar on December 7, 1988. He has one prior record of discipline. On September 24, 2001, respondent entered into a stipulation in State Bar Court Case Number 00-C-11716-EEB for misconduct involving a violation of Business and Professions Code section 6068(a) for suffering a criminal conviction and discipline consisting of a public reproof. On January 22, 2011, respondent pleaded guilty to a misdemeanor contempt charge in violation of 18 U.S.C Section 402 and was sentenced to two years of probation including the condition that respondent not engage in the practice of bankruptcy law for 24 months. Respondent admitted that between March and April 1996, respondent failed to amend pleadings and legal documents he filed with the Bankruptcy Court, which contained matters he knew to be false. During respondent's prior State Bar proceeding, the parties stipulated that there were no aggravating circumstances and respondent's conduct was mitigated by his lack of a prior record of discipline. Respondent stipulated to discipline involving a public reproof. The stipulation was filed on September 24, 2001 and became effective on October 10, 2001.

Significant Harm to Client (Std. 1.5(j)): Respondent's misconduct was a contributing factor in his clients suffering significant harm. Respondent's clients lost their home even though they sought bankruptcy protection and thought that the foreclosure proceedings had been stayed.

MITIGATING CIRCUMSTANCES.

Candor and Cooperation with the State Bar: Respondent has cooperated at all stages of the State Bar's investigation. He has acknowledged wrongfulness for his misconduct. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [candor and cooperation with the State Bar during the disciplinary investigation and proceeding can be a mitigating circumstance].)

Good Character: Respondent submitted seven character letters attesting to respondent's good character. The affiants include people who have known respondent for 12 to 35 years including one attorney, one former client, one neighbor, one church and scouting member, one business professional, one network news reporter and his wife. The authors are aware of the respondent's misconduct and they nonetheless attest to respondent's good character, particularly that he is a hard-working, honest and trustworthy attorney who spends a great deal of time volunteering and helping others. (See *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 467, 471 [six character witnesses can establish good character, even though not every witness knew all of the details of the respondent's misconduct].)

Community Service: Respondent submitted seven character letters and five additional letters detailing respondent's volunteer service in the community regarding his involvement with his church and Boy Scouts of America. Respondent also submitted documentation regarding his volunteer services for professional associations including the California Society of Tax Consultants where he served as President of the local chapter for four years and as President of the state-wide chapter for two years as recent as 2015. Respondent has also volunteered to speak on several panels and forums hosted by the National Business Institute, Attorney Credits Online Education, North County Bar Association, and the California Tax Consultants Summer Symposium. (See *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716, 729 [attorney given credit for good character plus additional mitigation for pro bono and community service].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

Standard 2.7(c) states, "Suspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients."

Here, respondent's level of discipline is driven by the extent of his misconduct. Respondent's misconduct involves one count of failing to perform and two counts of failing to communicate in one client matter. Respondent failed to perform legal services competently when his lack of supervision resulted in his failure to respond to the Motion for Relief from Automatic Stay, his paralegal improperly advising his clients that there were no problems regarding their bankruptcy case, and his failure to take remedial measures upon discovering that he failed to oppose the motion.

Furthermore, respondent failed to inform his clients regarding significant developments in their case, specifically, that CitiMortgage filed a Motion for Relief from Automatic Stay, respondent failed to file an opposition, the uncontested motion was granted and his clients' home was sold at auction. Additionally, respondent failed to respond to his clients' status requests when emails from the Lindsleys to respondent's paralegals and secretary on March 18, 2014, April 17, 2014 and June 2, 2014 were not properly forwarded to respondent, and respondent failed to supervise his staff to ensure that he received and responded to his client's communications. Respondent also failed to respond to Mrs. Lindsley's email sent directly to him on July 9, 2014.

In aggravation, respondent's clients endured significant harm in the loss of their home. Respondent's misconduct was a contributing factor in his clients suffering significant harm. Respondent's clients lost their home even though they sought bankruptcy protection and thought that the foreclosure proceedings had been stayed.

Respondent also has a prior discipline matter from 2001 where he stipulated to a violation of Business and Professions Code section 6068(a) stemming from a 1996 criminal conviction for a misdemeanor contempt charge. The weight of this aggravating factor is diminished because 18 years have passed between the past and present misconduct, and more than 16 years have passed since the prior discipline was imposed. (*In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713 [diminished aggravation for prior discipline where misconduct occurred 17 years earlier, resulted in a private reproof, and involved acts unrelated to present misconduct].)

Respondent's misconduct is mitigated by several factors, including good character, community service work, candor and cooperation with the State Bar and entering into a pre-filing stipulation. Respondent also refunded his clients \$1,800.00 for attorneys fees. Although respondent is not entitled to mitigation for restitution since his refund was made after State Bar's involvement, it is indicative of respondent's remorse and relevant for determining the appropriate level of discipline. Additionally, respondent has instituted remedial measures demonstrating his willingness and ability to conform to his ethical responsibilities. Respondent hired an associate in 2014 to assist him with his practice, instituted twice weekly staff meetings to discuss case management reviews, enforced an office policy for the lead attorney to be included on all correspondence leaving the office and improved their data management methods of tracking files by scanning documents and calendaring them immediately upon receipt.

Standard 1.8(a) applies despite the remoteness of respondent's prior misconduct due to the serious nature of his criminal conviction resulting in his prior misconduct. Accordingly, despite the diminished aggravation warranted by respondent's prior discipline, given the nature of the current misconduct, discipline higher than the public reproof, which respondent had previously received, is warranted.

In weighing the misconduct, along with respondent's mitigation and aggravation, the appropriate level of discipline is one year stayed suspension, two years of probation with standard conditions.

This level of discipline is consistent with case law. In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, Van Sloten ceased performing any services for a single client and was found culpable of failing to perform and failing to communicate. In aggravation, Van Sloten failed to appear for the oral argument of the appeal of the referee's decision, which the Supreme Court found demonstrated a lack of concern for the disciplinary process and a failure to appreciate the seriousness of the charges against him. (*Id.* at p. 933.) Van Sloten had no prior record of discipline and the court imposed a six-month stayed suspension with one year of probation. The misconduct in the present case is similar because respondent failed to provide legal services competently and failed to communicate in one client matter. Unlike the attorney in *Van Sloten*, respondent has an aggravating factor for a prior record of discipline. Therefore, respondent's case warrants a level of discipline greater than the six-month stayed suspension ordered in *Van Sloten*.

In light of the foregoing, discipline consisting of a one-year stayed suspension; two years of probation with standard conditions is appropriate to protect the public, the courts and the legal profession, maintain high professional standards by attorneys, and preserve public confidence in the legal profession. (Std. 1.1.)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 21, 2017, the discipline costs in this matter are \$4,021.60. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT.


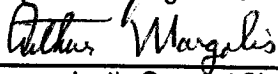
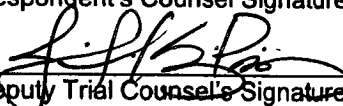
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: GARY ALLEN QUACKENBUSH	Case number(s): 16-O-10738
--	--------------------------------------

SIGNATURE OF THE PARTIES

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

<u>6/8/17</u> Date	<u></u> Respondent's Signature	<u>Gary Allen Quackenbush</u> Print Name
<u>6/12/17</u> Date	<u></u> Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>6/15/17</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Jennifer Kishimizu Pinney</u> Print Name

(Do not write above this line.)

In the Matter of: GARY ALLEN QUACKENBUSH	Case Number(s): 16-O-10738
---	-------------------------------

STAYED SUSPENSION ORDER

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

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

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

6/27/17
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 27, 2017, I deposited a true copy of the following document(s):

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

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

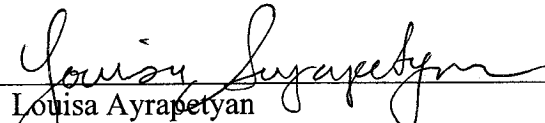
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

ASAMI J. KISHIMIZU PINNEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 27, 2017.



Louisa Ayrapetyan
Case Administrator
State Bar Court