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State Bar Court of California
Hearing Department
San Francisco
ACTUAL SUSPENSION

PUBLIC MATTER

Counsel for the State Bar **Danielle Adoración Lee** **Senior Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2218** Bar # **223675**	Case Number(s): **16-O-10780-CV** **17-O-02624** **17-O-04790**	For Court use only FILED PS JUN - 7 2019 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent **Thomas Oscar Gillis** **1006 H Street, Suite 3** **Modesto, CA 95354** **(209) 575-1153** Bar # **40186**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** [X] PREVIOUS STIPULATION REJECTED	
In the Matter of: **THOMAS OSCAR GILLIS** Bar # **40186** 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 **June 6, 1967**.

(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 **25** 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. It is recommended that (check one option only):

☒ Costs be 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

☐ Costs be 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. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years: .

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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: **96-O-02494 [S107944]. A true and correct copy is attached as Exhibit 1.**

(b) ☒ Date prior discipline effective: **November 15, 2002.**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **See pages 20-21.**

(d) ☒ Degree of prior discipline: **actual suspension.**

(e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below. Case No. 99-O-13689. A true and correct copy is attached as Exhibit 2. See pages 20-21.

(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 Respondent's misconduct.

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

(11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 21.**

(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 [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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings. **See page 21.**

(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 Respondent's 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 Respondent.

(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 Respondent, 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 Respondent's control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Pretrial stipulation. See page 21.
Good Character. See page 21.

D. Recommended Discipline:

(1) ☐ **Actual Suspension:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent must be suspended from the practice of law for the first of the period of Respondent's probation.

(2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(3) ☒ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for **3 years**, the execution of that suspension is stayed, and Respondent is placed on probation for **4 years** with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first **2 years** of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:

a. Respondent makes restitution to **Teena and Ramiro Gutierrez** in the amount of $ **5,113** plus 10 percent interest per year from **August 14, 2015** (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:

  a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

Payee	*Principal Amount*	*Interest Accrues From*

  b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

  a. Respondent makes restitution to in the amount of $ plus 10 percent interest per year from (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,

b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

  a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

Payee	*Principal Amount*	*Interest Accrues From*

  b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for , the execution of that suspension is stayed, and Respondent is placed on probation for with the following conditions.

- Respondent is suspended from the practice of law for the first of probation (with credit given for the period of interim suspension which commenced on).

E. Additional Conditions of Probation:

(1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

(2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

(3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

(4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

(5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

(6) ☒ **Quarterly and Final Reports:**

a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation

or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(7) ☒ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because .

(9) ☒ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

(12) ☐ **Minimum Continuing Legal Education (MCLE):** Within after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the

date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

(13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation:

(14) ☒ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(15) ☐ **The following conditions are attached hereto and incorporated:**

☐ Financial Conditions ☐ Medical Conditions

☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

F. Other Requirements Negotiated by the Parties (Not Probation Conditions):

(1) ☒ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.

(2) ☐ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because .

(3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20

is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

(4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

(5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

(6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS OSCAR GILLIS

CASE NUMBERS: 16-O-10780-CV, 17-O-02624, 17-O-04790

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.

FACTS COMMON TO ALL CASES:

1. Respondent was admitted to practice law in California on June 6, 1967.

2. Respondent maintains a law firm that specializes in bankruptcy law. He is the sole attorney in his own firm, which has offices in five different locations throughout California, including Modesto, Yuba City, Elk Grove, Visalia, and Fresno. Respondent primarily works out of the Modesto office. All of the other offices are staffed exclusively by non-lawyer employees. Despite being the sole attorney in his law firm, respondent has filed approximately 11,000 bankruptcy petitions in California in the last 20 years. Almost all of those cases were for low income, Hispanic clients.

3. Since at least 2009, respondent employed Efrain Ramirez ("Ramirez") as a non-lawyer office manager in the Modesto Office. Respondent employed Soccoro Villegas ("Villegas") as a non-lawyer employee in the Visalia Office. Respondent also employed Kathy Alcaraz ("Alcaraz") as a non-lawyer office manager in the Modesto Office after Ramirez.

4. Among other job duties, Ramirez performed client intake and was responsible for doing odd jobs, like stopping sales of real property, working with clients who were behind on their bankruptcy payments, and handling problems with existing clients. Alcaraz initially worked in advertising and traveled from office to office, and as a legal assistant, and later became the office manager of the Modesto office after Ramirez. Villegas worked in the Visalia office and performed client intake and worked with clients to collect the documents necessary for their bankruptcy cases. Respondent had a dedicated cashier until December 2014. Ramirez sometimes made receipts and turned the money over to the cashier. Respondent allowed Ramirez and other non-lawyer employees to have access to respondent's PACER account.

5. Respondent was responsible for supervising the activities and job duties of Ramirez, Alcaraz and Villegas. However, respondent, by virtue of the way he practiced in multiple locations, could not and did not adequately supervise Ramirez, Villegas, and Alcaraz and other non-lawyer employees.

6. On October 26, 2015, Ramirez left respondent's employ.

7. Sometime after October 26, 2015, it came to respondent's attention that Ramirez had misappropriated client monies while working at respondent's law firm.

8. Respondent immediately contacted the United States Trustees' Offices in Sacramento and Fresno to alert them of the thefts committed by Ramirez.

9. Respondent fully cooperated with local authorities and urged prosecution of Ramirez.

10. Ramirez was arrested, and is currently facing felony criminal charges for grand theft, forgery and obtaining money by false pretenses and embezzlement. (See Stanislaus County Superior Court Case Nos. MPD MP15122162, MPD MP15119295, MPD MP15124034.)

Case No. 16-O-10780 (Complainant: Teena and Ramiro Gutierrez)

FACTS:

11. In August of 2010, Teena and Ramiro Gutierrez (together "Gutierrezes") hired respondent to file a Chapter 13 Bankruptcy on their behalf.

12. Mrs. Gutierrez initially met with Ramirez for an initial client intake. The next day, both of the Gutierrezes met with respondent directly. They paid $4,000 for respondent's legal services.

13. On September 9, 2010, respondent filed the bankruptcy petition on behalf of the Gutierrezes, and thereafter represented them in the bankruptcy action as it proceeded for the next five years.

14. Their court-approved, Chapter 13 Bankruptcy plan required them to make monthly payments, which included taxes, insurance, and mortgage payments.

15. In August of 2015, the Gutierrezes received notification from the trustee that they were delinquent on these payments. Mrs. Gutierrez contacted the trustee, and the trustee directed her to talk to her attorney, respondent.

16. Mrs. Gutierrez went to respondent's office and met with Ramirez, who told her that she had to pay approximately $5,000 for back taxes and insurance to resolve the problem with the court. According to court records, the Gutierrezes were actually only in arrears by approximately $700.

17. Mrs. Gutierrez obtained $5,113 in money orders. On August 14, 2015, she gave them to Ramirez. Ramirez asked Mrs. Gutierrez not to fill in the payee on the money orders. Mrs. Gutierrez complied.

18. Ramirez made the money orders payable to himself, and cashed the money orders.

19. Mrs. Gutierrez continued receiving delinquent notices from the bankruptcy court.

20. On December 10, 2015, the U.S. Trustee filed a motion to dismiss Mr. and Mrs. Gutierrez's Chapter 13 plan, because it had not received payment on their behalf from respondent's law firm.

21. Mrs. Gutierrez contacted respondent and informed him that the bankruptcy court had not received any payment on her and her husband's behalf from respondent's law firm.

22. Mrs. Gutierrez then learned that Ramirez was no longer working at respondent's law firm.

23. Respondent informed her that Ramirez had stolen funds from respondent and his clients, including from her and her husband.

24. Respondent recommended that the Gutierrezes file a police report against Ramirez.

25. In December of 2015, Mrs. Gutierrez filed a police report against Ramirez.

26. Mr. and Mrs. Gutierrez had to pay an additional $700 to the court to successfully complete the Chapter 13 Bankruptcy.

27. To date, respondent has not returned the $5,113 to the Gutierrezes.

CONCLUSIONS OF LAW:

28. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office, in Ramirez's receipt and handling of clients funds, which resulted in Ramirez's theft of $5,113 of the Gutierrezes' funds designated for their bankruptcy plan, respondent intentionally and recklessly failed to perform with competence, in willful violation of Former Rules of Professional Conduct, rule 3-110(A).[1]

29. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office, in Ramirez's receipt and handling of clients funds, which resulted in Ramirez's theft of $5,113 of the Gutierrezes' funds designated for their bankruptcy plan, respondent failed to ensure that client funds were deposited into a bank account labeled "Trust Account" or words of similar import, in willful violation of Former Rules of Professional Conduct, rule 4-100(A).

30. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office, in Ramirez's receipt and handling of clients funds, which resulted in Ramirez's theft of $5,113 of the Gutierrezes' funds designated for their bankruptcy plan, respondent by his grossly negligent conduct in the theft and misappropriation of the Gutierrezes' funds, committed an act of moral turpitude dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.[2]

Case No. 17-O-02624 (Complainant: Eduardo and Esther Mares)

FACTS:

31. On June 11, 2011, Eduardo Mares and Esther Mares hired the law office of respondent to prepare and file a bankruptcy petition on their behalf and represent them during the pendency of the bankruptcy proceedings. Mr. Mares spoke to respondent's nonlawyer employee, Ramirez. Ramirez informed Mr. Mares that it would cost them $3,500 to file a Chapter 13 bankruptcy.

32. On June 11, 2011, Mr. Mares paid Ramirez $2,000.

33. On August 28, 2011, Mr. Mares paid Ramirez the remaining balance of $1,500, plus a $274 court fee.

34. In September of 2013, Mr. Mares received a letter from Bank of America regarding the bankruptcy, and told Ramirez about it. Ramirez told Mr. Mares that he would have to file a different bankruptcy under Chapter 7.

35. Ramirez said he would reimburse Mr. Mares the $1,500 because a Chapter 7 was cheaper than a Chapter 13.

36. On September 6, 2013, Ramirez filed a Chapter 7 bankruptcy petition on behalf of Mr. and Mrs. Mares, using respondent's name, without respondent's knowledge or involvement. Ramirez filed a skeleton bankruptcy petition, without the supporting bankruptcy schedules. The advice by Ramirez to the Mareses and the filing of the bankruptcy petition were the unauthorized practice of law by Ramirez.

37. On September 23, 2013, Ramirez returned $1,500 to Mr. Mares.

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[1] All references to "rule" or "Rule" are to the former Rules of Professional Conduct, unless otherwise specified.

[2] All further references to "section" or "Section" are to the Business and Professions Code, unless otherwise specified.

38. The Mareses' bankruptcy case required the supporting bankruptcy schedules be filed in order to support the initial bankruptcy petition, so that the case could continue to progress in the bankruptcy court in order for the Mareses to be able to obtain relief and a discharge under the bankruptcy statutes.

39. Ramirez failed to file the supporting bankruptcy schedules for the Mareses' bankruptcy petition, and failed to take any other action in support of the Mareses' bankruptcy case, effectively abandoning the Mareses' bankruptcy case.

40. On October 15, 2013, as a result of Ramirez's failure to file the supporting bankruptcy schedules for the Mareses' bankruptcy petition, and failure to take any other action in support of the Mareses' bankruptcy case, the bankruptcy court terminated the Mareses' bankruptcy case.

41. Shortly thereafter, Ramirez told Mr. Mares that it was not necessary to go to court because everything was resolved.

42. In October of 2016, Mr. Mares received a call from one of the detectives who was investigating Ramirez for thefts from respondent and respondent's clients. The detective asked Mr. Mares if he had given or received money orders from Ramirez.

43. Mr. Mares then called the respondent's law office and asked what was going on with his case. The secretary told Mr. Mares that his bankruptcy never went through, and that Mr. Mares needed to file bankruptcy again because it was never finished.

44. After being contacted by the State Bar regarding Mr. Mares's complaint against respondent, respondent paid Mr. Mares $2,274 to reimburse him for the remaining money that Ramirez took from Mr. Mares.

CONCLUSIONS OF LAW:

45. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office, and by allowing Ramirez to use respondent's PACER login I.D. and password, and in the receipt and handling of funds from the Mareses, which resulted in Ramirez giving legal advice to the Mareses, Ramirez filing a bankruptcy petition on behalf of the Mareses, the Mareses' bankruptcy petition being dismissed for failure to prosecute, and the theft of $2,274 of the Mareses' funds by Ramirez, respondent intentionally and recklessly failed to perform with competence, in willful violation of Former Rules of Professional Conduct, rule 3-110(A).

46. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office and by allowing Ramirez to use respondent's PACER login I.D. and password, which resulted in Ramirez giving legal advice to the Mareses, and Ramirez filing a bankruptcy petition on behalf of the Mareses, respondent aided and abetted Ramirez in the Unauthorized Practice of Law, in willful violation of Former Rules of Professional Conduct, rule 1-300(A).

47. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office, in the receipt and handling of funds from the Mareses, which resulted in Ramirez's theft of $2,000 in advanced fees from Mr. and Mrs. Mares, and by failing return the $2,000 to the Mareses for five years after their bankruptcy terminated unsuccessfully, respondent failed to promptly return unearned fees upon termination of employment, in wilful violation of Former Rules of Professional Conduct, rule 3-700(D)(2).

48. By failing to adequately supervise Ramirez, a non-lawyer employee in respondent's Modesto office and by allowing Ramirez to use respondent's PACER login I.D. and password, which resulted in Ramirez giving legal advice to the Mareses, Ramirez filing a bankruptcy petition on behalf of the Mareses, and Ramirez failing to file the supporting bankruptcy schedules or take any further action in the Mareses' bankruptcy case,

effectively abandoning the Mareses' bankruptcy case, which caused the bankruptcy court to dismiss the Mareses' bankruptcy case, respondent withdrew from representation without the permission of the bankruptcy court, in willful violation of Former Rules of Professional Conduct, rule 3-700(A)(1).

Case No. 17-O-04790 (Complainant: Scott Lyons on behalf of Alvaro and Maria Cortes and Charlie and Jamie Lynn Stankewitz)

FACTS:

Alvaro and Maria Cortes

49. On March 8, 2012, Alvaro and Maria Cortes went to respondent's office in Modesto. They did not meet with respondent. They met with respondent's nonlawyer employee, Ramirez. Ramirez spoke to them about filing bankruptcy and told them that Chapter 13 would be best for them. That same day, Mr. and Mrs. Cortes paid the retainer fee of $3,500 to retain respondent's law firm for the bankruptcy.

50. Mr. and Mrs. Cortes never met with or were legally advised by respondent at any point. Mr. and Mrs. Cortes were only ever advised by Ramirez whenever they had legal questions regarding the bankruptcy.

51. Alcaraz, who was acting as a legal assistant at that time, prepared all of their bankruptcy papers. Alcaraz told the Corteses that they needed to list both their debts and their assets on the bankruptcy petition.

52. Mr. and Mrs. Cortes informed Alcaraz that Mr. Cortes had a worker's compensation case against his employer, Slover Brothers Trucking, Inc. They listed it as "pending" in their Statement of Financial Affairs and on the page that lists assets of the debtor.

53. On March 13, 2012, Ramirez and Alcaraz filed a Chapter 13 bankruptcy petition on behalf of Mr. and Mrs. Cortes.

54. Mr. and Mrs. Cortes began making their monthly plan payments.

55. On May 15, 2012, Ramirez called Mr. and Mrs. Cortes, before their meeting of creditors hearing, and told them that they should not tell the Chapter 13 trustee anything about the workers' compensation case at the meeting of creditors.

56. On May 15, 2012, Mr. and Mrs. Cortes attended the meeting of creditors. They met with an attorney who was not respondent. The attorney told them that he was making a special appearance on respondent's behalf.

57. At the meeting of creditors, Mr. Cortes and his wife found out that they had to testify under oath and under penalty of perjury. Mr. Cortes and his wife disclosed the fact that Mr. Cortes had a worker's compensation claim during his interview with the Chapter 13 trustee.

58. The trustee informed the debtors that if they received a settlement, they should inform their attorney. The trustee also instructed Mr. and Mrs. Cortes to amend their schedules to better disclose the worker's compensation claim, and the Chapter 13 trustee concluded the meeting.

59. Shortly thereafter, Mr. and Mrs. Cortes returned to respondent's office. They met with Alcaraz, who told them she would fix the problem, and asked them to sign off on a blank coversheet.

60. Alcaraz made changes to the Corteses' voluntary petition. She amended schedule B for personal property to list the workman's compensation claim against Slover Brothers Trucking Inc. with a value of $22,075. She amended the schedule C for Property Claimed As Exempt under 11 U.S.C. § 522(b)(3) to list the workers compensation claim against Slover Brothers Trucking Inc. with a current value of $22,075, which was

claimed as an exemption pursuant to Code of Civil Procedure § 703.140 (b) (11) (D) (the "wildcard" exemption.)

61. In September of 2012, the Corteses' first modified Chapter 13 plan was confirmed after Alcaraz made the above amendments.

62. On the order confirming their plan, there was an order that Mr. Cortes needed to inform the Chapter 13 Trustee of any developments in his worker's compensation case.

63. Mr. and Mrs. Cortes never saw the amendments, and they were never informed about the details of the order confirming the plan or their significance, either by respondent, or by his nonlawyer employees.

64. Mr. and Mrs. Cortes also never received a copy of the order confirming their first modified Chapter 13 plan, or any order directing them to keep respondent's office and the Chapter 13 trustee informed.

65. Mr. and Mrs. Cortes never saw or spoke to respondent or had any direct communication with him. Mr. and Mrs. Cortes only ever spoke to or were advised by respondent's nonlawyer employees.

66. Mr. and Mrs. Cortes continued to make their regularly scheduled Chapter 13 plan payments.

67. In the summer of 2015, Mr. Cortes's workers compensation case was settled.

68. On August 14, 2015, Mr. Cortes received a settlement check in the amount of $35,790.

69. Mr. Cortes did not tell respondent, and did not inform the Chapter 13 trustee. Mr. Cortes immediately deposited the check, and Mr. and Mrs. Cortes spent the money.

70. In mid-February 2017, one of respondent's nonlawyer office staff contacted Mr. Cortes, asked him about his workers' compensation settlement, and told him to bring all of the settlement documents that he had to respondent's office.

71. Shortly thereafter, Mr. Cortes went to respondent's office in Visalia, and met with respondent's non-attorney employee, Villegas. Mr. Cortes only had a few papers, including a copy of his settlement check. Villegas faxed these documents to Alcaraz.

72. On March 7, 2017, the Chapter 13 trustee moved to dismiss Mr. and Mrs. Cortes' case because Mr. Cortes failed to obey the court order to inform the Chapter 13 trustee about any updates to his worker's compensation claim.

73. On March 13, 2017, Mr. Cortes went to respondent's office and took his complete settlement documents. Respondent's nonlawyer support staff told Mr. Cortes they did not need the settlement documentation anymore. Instead, they asked Mr. Cortes for his 2014 and 2015 tax returns. Villegas asked Mr. and Mrs. Cortes to sign a blank amendment coversheet to amend their case.

74. Mr. and Mrs. Cortes did not understand why their case was being dismissed without a discharge, because they had made all of the plan payments, and they had disclosed the worker's compensation claim.

75. Not wanting to risk having their case dismissed, the Corteses sought new counsel.

76. On March 13, 2017, Mr. and Mrs. Cortes went to see attorney Scott Lyons after going to respondent's Visalia office. Mr. Lyons looked at the Chapter 13 trustee's motion to dismiss, and retrieved a copy of the order confirming the Chapter 13 plan. Mr. Lyons informed Mr. and Mrs. Cortes of the order confirming their first modified plan, and its details. The first time Mr. and Mrs. Cortes saw a copy of the order

confirming their first modified plan or were informed about the details of the order confirming their first modified Chapter 13 plan, was in Mr. Lyons' office.

77. Mr. Lyons informed Mr. and Mrs. Cortes that they were not allowed to spend the worker's compensation settlement. They were never told that by respondent's office. Mr. and Mrs. Cortes never met respondent, and no one at his office ever told them they were not able to spend it.

78. Had Mr. Cortes known about the order, he would have disclosed the details of his worker's compensation settlement, and would have given the money to the Chapter 13 trustee.

79. Mr. and Mrs. Cortes hired Mr. Lyons and substituted him in place of respondent.

80. Mr. Lyons filed an opposition to the trustee's motion to dismiss on behalf of Mr. and Mrs. Cortes. The trustee accepted the reasons given, and withdrew his motion to dismiss after Mr. Cortes made appropriate amendment to the bankruptcy schedules that satisfied the Chapter 13 trustee.

CONCLUSIONS OF LAW:

81. By failing to adequately supervise Ramirez and Alcaraz, non-lawyer employees in respondent's Modesto office, in their interactions with the Corteses, which resulted in Ramirez's giving legal advice to the Corteses, Ramirez and Alcaraz failing to inform the Corteses that they needed to inform respondent's office and the bankruptcy court when they received the worker's compensation settlement check, and Ramirez and Alcaraz failing to inform the Corteses that they were not allowed to spend the worker's compensation settlement, respondent recklessly failed to perform legal services with competence, in wilful violation of Former Rules of Professional Conduct, rule 3-110(A).

82. By failing to adequately supervise Ramirez and Alcaraz, non-lawyer employees in respondent's Modesto office, in their interactions with the Corteses, which resulted in Ramirez's giving legal advice to the Corteses, respondent aided and abetted Ramirez and Alcaraz in the Unauthorized Practice of Law, in willful violation of Former Rules of Professional Conduct, rule 1-300(A).

83. By failing to adequately supervise Ramirez and Alcaraz, non-lawyer employees in respondent's Modesto office, in their interactions with the Corteses, which resulted in Ramirez's giving legal advice to the Corteses, Ramirez and Alcaraz failing to inform the Corteses that they needed to inform respondent's office and the bankruptcy court when they received the worker's compensation settlement check, and Ramirez and Alcaraz failing to inform the Corteses that they were not allowed to spend the worker's compensation settlement, respondent failed to keep respondent's 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).

84. By signing the Corteses' bankruptcy petition to attest that respondent had informed his clients, Mr. and Mrs. Cortes, of what bankruptcy Chapters they could proceed under and of the relief available pursuant to each possible Chapter, when respondent knew that statement was false because all of the legal advice that was given to Mr. and Mrs. Cortes was given by non-lawyer employees Ramirez and Alcaraz, respondent committed an act of moral turpitude dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.

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FACTS:

Charley and Jamie Lynn Stankewitz

85. In January 2017, Mr. Stankewitz went to an appointment at respondent's Visalia office. Mr. Stankewitz wanted to file a Chapter 7 bankruptcy, and had previously been told by attorney Scott Lyons that he would not qualify for a Chapter 7 bankruptcy, and wanted a second opinion. Mr. Stankewitz met with respondent's non-lawyer employee, Villegas, and not with respondent. Respondent was not present at the office when Mr. Stankewitz went to have his appointment.

86. Mr. Stankewitz gave his financial information to Villegas and asked her if he could file for Chapter 7 bankruptcy. Without hesitation, Villegas said that he could file for Chapter 7 bankruptcy "no problem." Villegas did not relay Mr. Stankewitz's financial information to anyone else and wait for a reply. Respondent was not in the Visalia office or anywhere in the building. All legal advice was given to him by Villegas.

87. Mr. Stankewitz asked her how much it would be, and Villegas quoted Mr. Stankewitz $2,000, and said that he needed to get them a cashier's check for $2,000 immediately.

88. Villegas provided Mr. Stankewitz the Chapter 7 checklist that listed the financial documents Mr. Stankewitz would need to bring to her.

89. On October 26, 2016, Mr. Stankewitz gave Villegas $2,000 via cashier's check made payable to respondent so that he and his wife, Jamie Lynn Stankewitz, could file for Chapter 7 bankruptcy.

90. Villegas also charged Mr. and Mrs. Stankewitz $150 to do their credit counseling classes for them. Mr. Stankewitz paid her $150, and respondent's office completed their classes and obtained their certificates for them. Villegas led Mr. and Mrs. Stankewitz to believe that it was acceptable to pay respondent's legal staff to do it on their behalf. They did not know at the time that they had to complete their own classes.

91. Mr. Stankewitz's mother, Nancy Gail Stankewitz, was his bookkeeper and record keeper for his hardwood flooring business. Mr. Stankewitz's mother took all of his financial documents to Villegas.

92. On January 17, 2017, Villegas called Mr. Stankewitz and told him that he and his wife needed to come in to the Visalia office to review and sign their bankruptcy papers for filing.

93. Shortly thereafter, Mr. Stankewitz went into respondent's Visalia office and met with Villegas. He did not meet with respondent.

94. Villegas then informed Mr. Stankewitz that he did not qualify for Chapter 7 and needed to file Chapter 13. Mr. Stankewitz was very upset by this news because Mr. Stankewitz had specifically asked Villegas if they qualified for a Chapter 7, and Villegas had said they did.

95. Because he had already paid for the bankruptcy and the papers had already been prepared, and because at that point he believed that he and his wife only qualified for Chapter 13, Mr. Stankewitz and his wife signed off on their bankruptcy petition in Chapter 13.

96. Mr. and Mrs. Stankewitz never met with respondent prior to the filing of their bankruptcy petition. All legal advice was given to them by Villegas.

97. On February 27, 2017, their Chapter 13 bankruptcy was filed, and they began making payments to the Chapter 13 trustee.

98. Mr. and Mrs. Stankewitz saw respondent for the first time when they went to their meeting of creditors on April 11, 2017. He told Mr. and Mrs. Stankewitz that they would "have a meeting in a little bit."

Mr. Stankewitz understood that to mean that they would have an attorney-client meeting with respondent prior to the meeting of creditors. Instead, they only had their meeting of creditors.

99. During the meeting of creditors, the Chapter 13 trustee's office said it was missing several important financial documents from Mr. and Mrs. Stankewitz, including their 2016 state and federal tax returns. The meeting of creditors was continued to May 23, 2017.

100. After the meeting of creditors, respondent told Mr. and Mrs. Stankewitz "we'll meet." But they did not see respondent again until the continued meeting of creditors on May 23, 2017.

101. Sometime after their first hearing, Mr. Stankewitz and his wife received notice of a motion to dismiss set for May 25, 2017, for failure to provide documents to the Chapter 13 trustee.

102. Neither respondent nor respondent's staff told Mr. Stankewitz that he needed to provide them with the financial documents that the Chapter 13 trustee was missing prior to filing the Chapter 13 bankruptcy petition.

103. The Chapter 7 checklist that Villegas gave him showed that he only needed to provide his tax returns for 2014. Had Mr. Stankewitz known that his 2016 state and federal tax returns were needed, he would have provided them to the respondent's office prior to the filing of the bankruptcy case.

104. Mr. Stankewitz's mother called respondent's office in Modesto on their behalf to find out what was going on with regard to the motion to dismiss. Alcaraz told Mr. Stankewitz's mother that Mr. Stankewitz and his wife should not worry about the motion to dismiss and its hearing on May 25, 2017. She said that Mr. Stankewitz needed to be at the May 23, 2017 continued meeting of creditors hearing. Mr. Stankewitz needed to bring a copy of his request for an extension on his taxes to his continued meeting of creditors. Mr. Stankewitz's mother relayed this information to Mr. Stankewitz.

105. After receiving the information from his mother, Mr. Stankewitz had a friend, who was a certified public accountant, prepare an extension for Mr. Stakewitz's 2016 tax returns.

106. At his second meeting of creditors, Mr. Stankewitz brought his copy of his tax extension. When Mr. Stankewitz gave it to the trustee, she said that was not what her office needed at all; the trustee needed a copy of his actual filed tax return and not an extension. The meeting of creditors was continued again for a third time to June 20, 2017.

107. When Mr. Stankewitz spoke to respondent right after the May 23, 2017 meeting of creditors, respondent asked why Mr. Stankewitz brought a copy of the request for extension instead of his filed tax return. Mr. Stankewitz told respondent that was what Alcaraz told his mother that Mr. Stankewitz should bring.

108. Before they could go to the June 20th continued meeting of creditors, Mr. and Mrs. Stankewitz's bankruptcy case was dismissed at the May 25, 2017 hearing on the trustee's motion to dismiss. Shortly thereafter, Mr. Stankewitz and his wife found out their case was dismissed.

109. Mr. Stankewitz was distressed and he called respondent's office in Modesto to find out what was going on. He spoke with Alcaraz, who told him that dismissals happened all the time, and they could just re-file their Chapter 13. She told Mr. Stankewitz that she wanted him to bring another $2,000 to re-file his bankruptcy. Mr. Stankewitz was furious and also frightened that he and his wife were being made the victims of some kind of scam.

110. All legal advice that Mr. and Mrs. Stankewitz received for the duration of the time that respondent represented them was given to them by respondents' nonattorney employees.

111. Rather than hiring respondent's law office again, Mr. Stankewitz demanded all of his paperwork from respondent's law office. Respondent's office returned the file, but many documents were missing.

112. Shortly thereafter, Mr. Stankewitz made an appointment with attorney Scott Lyons' law office, met with Mr. Lyons, and discussed the case at length. They retained Mr. Lyons to file a Chapter 7 bankruptcy on their behalf.

113. On August 22, 2017, Mr. Stankewitz found out that they were supposed to do their own credit counseling courses, and they completed their own classes, for their Chapter 7 bankruptcy, that Mr. Lyons filed on their behalf.

114. Respondent refunded all fees and costs paid to him by Mr. and Mrs. Stankewitz.

CONCLUSIONS OF LAW:

115. By failing to adequately supervise Villegas and Alcaraz, non-lawyer employees in respondent's Visalia and Modesto offices, in their level of involvement with the Stankewitzes, which resulted in Villegas and Alcaraz giving legal advice to Mr. and Mrs. Stankewitz, Villegas and Alcaraz charging the Stankewitzes to take credit counseling classes for them, and Villegas and Alcaraz filing certificates of completion with the bankruptcy court that falsely represented to the bankruptcy court that the Stankewitzes had taken the credit counseling classes themselves, respondent intentionally and recklessly failed to perform with competence, in willful violation of Former Rules of Professional Conduct, rule 3-110(A).

116. By failing to adequately supervise Villegas and Alcaraz, non-lawyer employees in respondent's Visalia and Modesto offices, in their level of involvement with the Stankewitzes, which resulted in Villegas and Alcaraz giving legal advice to Mr. and Mrs. Stankewitz, respondent aided and abetted Alcaraz and Villegas in the Unauthorized Practice of Law, in willful violation of Former Rules of Professional Conduct, rule 1-300(A).

117. By signing the Stankewitzes' bankruptcy petition to attest that respondent had informed his clients, Mr. and Mrs. Stankewitz, of what bankruptcy Chapters they could proceed under and of the relief available pursuant to each possible Chapter, when respondent knew that statement was false because all of the legal advice that was given to Mr. and Mrs. Stankewitz was given by non-lawyer employees Alcaraz and Villegas, respondent committed an act of moral turpitude dishonesty or corruption, in willful violation of Business and Professions Code, section 6106

118. By filing certificates of completion of credit counseling classes by the Stankewitzes with the bankruptcy court to prove that the Stankewitzes had taken the required credit counseling classes themselves when respondent knew that statement was false, because respondent's nonlawyer employees Villegas and Alcaraz took the classes for them, respondent committed an act of moral turpitude dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has two prior disciplines, imposed in 2001 and 2002.

In State Bar Court Case Number 96-O-02494, respondent committed acts of moral turpitude by entering into an improper business transaction with a client and by failing to maintain the client confidences inviolate when he permitted his office staff to release the client's confidential settlement to a third-party. Respondent also attempted to mislead the State Bar in his response to an investigation letter. The underlying facts are as follows. Respondent sold his residential property to a client in exchange for a substantial portion of the settlement proceeds that respondent obtained on his client's behalf in a wrongful death action. Although the settlement agreement required respondent and the client to keep the amount confidential, respondent's office staff, at

respondent's behest, disclosed the amount of the settlement to respondent's home loan lender for the sole purpose of gaining time to bring his delinquent payments current. The court found respondent placed his interests above those of his client. Respondent received three years' probation and six months actual suspension. (*In the Matter of Gillis* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 387.) Respondent acknowledges that the attached Opinion on Review, and California Supreme Court Order attached to this stipulation as Exhibit 1 is a true and accurate record of respondent's prior discipline in this matter.

In State Bar Court Case Number 99-O-13689, respondent failed to perform competently and failed to keep his client informed of significant matters. Respondent agreed to represent Hunt in his DUI case to defend Hunt in his criminal matter and to appear on behalf of Hunt at his Department of Motor Vehicles Hearing. Respondent failed to appear at the arraignment, which resulted in a bench warrant being ordered for Hunt's arrest. Although respondent later had the bench warrant recalled and Hunt pled guilty to driving under the influence, respondent then failed to appear at Hunt's DMV hearing and the DMV suspended Hunt's license and required Hunt to complete an alcohol abuse treatment program prior to having his licensed reissued. Respondent failed to inform Hunt that respondent failed to appear at Hunt's DMV hearing. Hunt did not discover respondent's failure to appear until he received notification from the DMV. In April 2001, Respondent was given a public reproval. Respondent acknowledges that the Stipulation Re: Facts, Conclusions of Law, and Disposition and Order Public Reproval attached to this stipulation as Exhibit 2 is a true and accurate record of respondent's prior discipline in this matter.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent's misconduct affected four different sets of clients, and involved multiple acts of wrongdoing in each case.

MITIGATING CIRCUMSTANCES.

Spontaneous Candor and Cooperation (Std. 1.6(e)): When respondent discovered that his employee, Ramirez had stolen money from his clients, respondent alerted the U.S. Trustee and cooperated with law enforcement.

Good Character: Respondent provided declarations from five individuals , including an attorney, who attested to his overall good character. Many of these individuals were also familiar with Ramirez and expressed surprise regarding the theft. They were familiar with respondent's misconduct, and his problems with the State Bar and nonetheless attested to his overall good character. Respondent is entitled to limited mitigation for his good character. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking].)

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged his 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 [mitigative credit 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 [attorney's stipulation to facts and culpability considered 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 this matter, respondent admits to committing 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 2.11, which applies to respondent's violations of section 6106. Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law. Here, respondent's conduct directly related to his practice of law, as his inattention to the conduct of his non-lawyer employees led to a non-lawyer employee committing misappropriation and engaging in the unauthorized practice of law. The misappropriation of $5,113, is not insignificant (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [misappropriation of $1,355.75 not insignificant]), but it did occur through gross negligence, rather than intentional or dishonest conduct.

Nevertheless, standard 1.8(b)(1) provides that disbarment is appropriate if a member has two or more prior records of discipline, which includes actual suspension, unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior disciplines, one of which includes a six-month actual suspension. However, respondent's prior disciplines from 2001 and 2002 are remote in time, and his current misconduct is significantly mitigated by his good character and his spontaneous candor and cooperation with his victims and with the State Bar in entering into this stipulation. Of notable import, respondent immediately contacted the authorities and the U.S. Bankruptcy Trustee, and worked with this clients to repair their bankruptcy cases and to assist them in bringing criminal charges against Ramirez. Altruistically, respondent declined to file his own police report against Ramirez so as not to compete with his own clients for restitution and law enforcement resources. Respondent's actions in actively attempting to ameliorate the damage that Ramirez caused shows that respondent accepts and acknowledges that he is ultimately responsible for his employee's misconduct. Under these circumstances, a departure from standard 1.8(b) is warranted, as the most compelling mitigating circumstances clearly predominate. (Std. 1.1; *Blair v. State Bar, supra,* ["Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure"].) Discipline less than disbarment, in the form of a length actual suspension is appropriate in this case. Case law is also instructive. In the absence of post- *Silverton* Supreme Court case law, several recent Review Department opinions involving the grossly negligent misappropriation of client funds are on point.

Case Law

In *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, the Review Department found a total misappropriation of $8,646.34 arising from several client matters, 22 other ethical violations, and recommended disbarment. Guzman was put on notice by two DA investigators that his office manager was handling entrusted funds improperly. Guzman did not question his office manager about the DA's investigation nor did he take any action to protect his clients or his CTA for approximately nine months thereafter. Guzman's inaction persisted even after he became aware that the office manager was stealing some of his mail, including his CTA statements. When Guzman finally fired the office manager he did so via fax and thereafter found that she had absconded with most of his client files, his CTA ledger, and other office items. The Review Department found that Guzman had no prior discipline record over eight years in practice prior to the misconduct and cooperated with the State Bar by entering into a stipulation as to facts and documents, but assigned those factors minimal weight. In aggravation, the Review Department found multiple acts, significant harm to the clients from whom funds were misappropriated, and indifference.

In *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, the Review Department recommended a three-year-and-until actual suspension for an 81-year-old attorney with three priors (but some misconduct was contemporaneous with prior misconduct for which he was previously disciplined). Lawrence was found culpable of a probation violation, and misappropriating through gross negligence $800 which the Review Department found to be a relatively small amount of funds. The Review Department also found that Lawrence repaid the $800 fairly quickly and before the State Bar's involvement, and had established a history of serious health problems which the Review Department found mitigating. The Review Department found the multiple acts of wrongdoing to be aggravating, but offset by the mitigation.

In *In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr.296, a relatively inexperienced lawyer, allowed non-lawyers to practice "loan mod law" unsupervised under his name, and was found culpable of 28 counts of misconduct in eight client matters, including violation of Business and Professions Code section 6106.3, and Rules of Professional Conduct 1-300(A) [aiding UPL], 3-110(A) [incompetence], 3-700(D)(l) [failure to timely release client file], and 4-100(B)(4) [failure to promptly pay upon client request funds to which the client is entitled]. After about two and one-half years, Huang realized that he had lost control of his branch office run by the non-lawyers and attempted to shut it down. After he was threatened with physical violence by his non-lawyer staff, he notified the local District Attorney's Office and the State Bar and cooperated with both. Finding in aggravation, multiple acts of wrongdoing as well as significant client harm, and in mitigation, no prior record of discipline over three and one-half years in practice, good character, remorse, and cooperation, the Review Department recommended a two-year and until restitution and proof of rehabilitation actual suspension. "A lesser discipline would not protect the public, the courts, or the legal profession." *Huang,* 5 Cal. State Bar Ct. Rptr at p. 306

Huang had no prior misconduct, whereas respondent has two previous disciplinary cases, one with actual suspension.

Respondent, unlike Guzman, has two prior disciplines; however, Guzman did not believe that he was responsible for his employee's misconduct and showed indifference.[3]

Respondent's case most clearly resembled *Huang*, because respondent, like the attorney in Huang, assisted law enforcement in the prosecution of his former employee. Additionally, respondent has already made restitution to two of the three clients harmed by his employee's misconduct.

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[3] At trial, Guzman refused to take responsibility for mismanagement of his CTA, claiming he was "not the one who caused the dip[s]". (*Guzman*, 5 Cal. State Bart Ct. Rptr. 308, at p. 317.) His failure to participate on review, knowing that OCTC was seeking his disbarment, further illustrated his indifference. (*Id.* at p. 319.) Guzman sought to set aside his "default" in the Supreme Court, which denied his petition and disbarred Guzman.

Given respondent's willingness to enter into a stipulation to acknowledge that he is responsible for the criminal acts of his employee, his immediate cooperation with law enforcement to prosecute his former employee, immediate notification to the U.S. Trustee of the problems with his former employee, and efforts to assist any of his clients who were harmed by his former employee prior to the beginning of any State Bar investigations, his payment of restitution to the Mareses and the Stankewitzes, and his showing of good character, the public would be adequately protected by a three-year suspension stayed, four-years' probation, and a two-year actual suspension with standard conditions of probation, including Ethics School, CTA School, passage of the MPRE, and compliance with rule 9.20, California Rules of Court. A two-year actual suspension with a restitution requirement protects the public by making the remaining victim whole and serves to warn other potential clients of respondent's failure to supervise his nonlawyer employee, reassures the courts that the State Bar is policing the legal profession, and serves an educational function for both respondent and the legal profession, thereby maintaining professional standards 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 January 18, 2019, the discipline costs in this matter are $8,220. 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.

In the Matter of:	Case Number(s):
THOMAS OSCAR GILLIS	16-O-10780-CV 17-O-02624 17-O-04790

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
4/30/19	Thomas Gillis	Thomas Oscar Gillis
Date	Respondent's Counsel Signature	Print Name
5/10/19		Danielle Adoración Lee
Date	Deputy Trial Counsel's Signature	Print Name

In the Matter of:	Case Number(s):
THOMAS OSCAR GILLIS	16-O-10780-CV 17-O-02624 17-O-04790

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 13 of the Stipulation, line 5, the following footnote is added after "rule 4-100(A)": "In this stipulation, where the same facts support more than one violation (i.e., see numbered paragraphs 29 and 30), the charges are duplicative and the court does not give a duplicative charge additional weight in determining the appropriate discipline in this matter. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 175.)"
2. On page 13 of the Stipulation, at numbered paragraph 30, line 3, "resulting" is inserted between "conduct" and "in".
3. On page 20 of the Stipulation, numbered paragraph 116 is deleted, as Respondent was not charged in the Notice of Disciplinary Charges filed in this matter with a violation of rule 1-300(A) of the former Rules of Professional Conduct in the Stankewitz matter.
4. On page 24 of the Stipulation, paragraph 1, the following language is added at the end of that paragraph: "The requirement that Respondent provide to the State Bar Court satisfactory evidence of his rehabilitation, fitness to practice, and present learning and ability in the general law before he will be relieved of his actual suspension in this matter further provides public protection."

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

June 7, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
State Bar Court

S107944
S.B.C. No. 96-0-02494

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re THOMAS OSCAR GILLIS on Discipline

Petition for writ of review DENIED.

It is ordered that **Thomas Oscar Gillis, State Bar Number 40186**, be suspended from the practice of law in the State of California for three years; that execution of the three-year suspension be stayed; and that Gillis be placed on probation for three years subject to the conditions of probation, including a six-month period of actual suspension, recommended by the Review Department of the State Bar Court in its opinion filed on April 15, 2002. Furthermore, Gillis is ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and to provide satisfactory proof of his passage of that examination to the State Bar's probation unit in Los Angeles within that same year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Gillis is further ordered to comply with rule 955 of the California Rules of Court and to 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.* Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are to be paid to the State Bar in accordance with Business and Professions Code section 6140.7.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

Chief Justice

PUBLIC MATTER – DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of THOMAS OSCAR GILLIS, A Member of the State Bar.	**96-O-02494** **OPINION ON REVIEW**

The hearing judge found respondent Thomas Oscar Gillis culpable of three counts of misconduct in a single client matter. Respondent sold his residential property to his client in exchange for a substantial portion of the proceeds of a settlement that respondent obtained for that client as the result of the wrongful death of the client's son. Respondent was found to have violated rule 3-300, Rules of Professional Conduct,[1] section 6106, Business and Professions Code[2] prohibiting acts of moral turpitude and section 6068, subdivision (e) requiring an attorney to maintain the confidences of his or her client. The hearing judge recommended a stayed suspension of three years conditioned upon probation for that same period and an actual suspension of six months.

Both the State Bar and respondent seek review. The State Bar argues that three additional counts involving moral turpitude (§ 6106) and one count of failure to support the law (§ 6068, subd. (a)) deserve findings of culpability. Based on these arguments, the State Bar seeks a recommendation that respondent be actually suspended for two years and until he complies with

[1]All further references to rules are to the Rules of Professional Conduct.

[2]All further references to sections are to the Business and Professions Code, unless otherwise indicated.

standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.[3] It also seeks a recommendation that respondent be ordered to pay restitution in the sum of $110,000 to his client.

Respondent contends that the hearing judge committed error in not allowing respondent to qualify as an expert on real estate matters, giving insufficient weight to the value of the house he sold to his client and that there was insufficient evidence to find violations of section 6106 and section 6068, subdivision (e).

We agree with the hearing judge's findings of culpability of a violation of rule 3-300 and with his finding of moral turpitude in connection with respondent's transaction with his client. We also agree with the hearing judge's finding of culpability of a violation of section 6068 subdivision (e), by not maintaining confidential the amount of his client's settlement, but additionally find that violation involves moral turpitude in violation of section 6106. We further find culpability on one of two counts charging moral turpitude in respondent's response to letters of investigation from the State Bar. We recommend, as did the hearing judge, that respondent be suspended for three years, stayed, on the conditions that he be placed on probation for three years and that he be actually suspended for six months.

PROCEDURAL HISTORY

Respondent was charged with thirteen counts of misconduct involving two client matters. In the first client matter, respondent obtained at settlement of $250,000 for a client, we shall refer to as Anita, as the result of the wrongful death of her minor son. Respondent was charged with twelve counts of misconduct in his subsequent dealings with Anita. Counts 10, 11 and 12 were dismissed before trial on the motion of respondent. Those dismissals are not challenged on appeal, and we do not further consider them. Respondent was found not to be culpable in counts

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[3]The standards are found in Title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

7 and 8 (involving maintaining funds in trust and moral turpitude), and the State Bar does not challenge those findings. Following our review of the record, we agree with those findings of no culpability and do not further consider counts 7 and 8. In count 13, involving an unrelated client, the hearing judge found that culpability was not proven. The State Bar notes that it does not dispute the hearing judge's finding in that client matter, and following our review, we agree with that finding and do not further address count 13.

As noted, the State Bar seeks a finding of additional culpability on count four involving moral turpitude for failure to maintain inviolate his client's secrets, counts five and six, each involving alleged false statements to the State Bar during the investigative stage of this proceeding, and count nine alleging that respondent willfully failed to comply with California law by not providing Anita with the written disclosures required by Civil Code section 1102 et seq. These issues are discussed *post.*

FACTS

Respondent was admitted to practice in 1967 and has been a member of the bar since that time. In August 1993 respondent was retained by Anita to represent her in a wrongful death action arising out of the death of her minor son Danny, one of her seven children. The retainer agreement provided that respondent's fee would be computed on the recovery before any deduction for costs at the rate of 25 percent before service of process and 33 1/3 percent thereafter. Respondent had previously represented Anita as one of a group of tenants, pro bono, in a successful action alleging "slum lord" conditions. In October of 1993, respondent was successful in reaching an agreement for the settlement of Anita's wrongful death action for $250,000. That settlement agreement and general release was signed by Anita and respondent on October 2, 1993, and contained a clause drafted by the insurance company, that neither respondent nor Anita would disclose the fact of a settlement or the amount of the settlement.

Between the time of respondent's retention and the time of reaching the agreement for settlement, Anita informed respondent that she was about to be evicted from her apartment. Respondent had lived for 20 years on a three acre parcel in French Camp, California[4], consisting of a house occupied by respondent as his residence and office, a cabin, a mobile home and various other buildings, including chicken coops, a barn with corrals, a swimming pool and associated improvements. Respondent offered to let Anita move onto his property rent free. Anita, her boy friend, Paco, and at least three of her children moved onto the French Camp property, occupying the cabin and mobile home. Respondent agreed to, and did, pay Anita modest sums for housekeeping following her moving onto the property.

Respondent knew that Anita lacked skills for employment other than housekeeping, was unemployed, received no financial or other assistance from the father of her children and had no other source of income. Respondent also knew that she was receiving financial assistance from Aid to Families with Dependent Children (AFDC).

The $ 250,000 settlement draft came into respondent's possession on November 16 or 17, 1993. Between the time of reaching the settlement agreement and the arrival of the settlement draft, there were discussions between respondent and Anita concerning the purchase by Anita of the French Camp property by use of a portion of Anita's share of the settlement proceeds. There is a conflict in the evidence as to who initiated that discussion. Respondent, his wife and former secretary testified that such discussion was initiated by Anita, who had overheard a discussion between respondent and his fiancee about where they would live. On the other hand, Anita asserted that the sale was the idea of respondent. There is no doubt that Anita, Paco and her children found living on the property most desirable.

While the hearing judge found that the discussion was initiated by respondent, we conclude that the evidence demonstrates that the discussion was in fact initiated by Anita and

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[4]French Camp is located in San Joaquin County.

Paco.[5] The evidence clearly demonstrates that respondent, both of his secretaries and respondent's fiancee urged Anita, repeatedly, to look at other homes and to seek independent advice before purchasing the French Camp property. Respondent not only advised Anita in writing to seek independent counsel, but had follow-up discussions with Anita urging her do so, and offered to pay for any charges that were incurred. Respondent had one of his secretaries sit down with Anita and go over a directory of attorneys seeking to select an attorney to provide advice to her. Anita left that discussion to talk with Paco, and on her return stated, in effect, she did not want to see another attorney. It is also clear that, independent of directions from respondent, one of the secretaries strongly urged Anita to look at other property and obtain independent advice.

In spite of these precautions by respondent, we must further examine the transaction in light of the charge of a violation of rule 3-300. In November 1993 respondent gave Anita a copy of an appraisal dated August 28, 1992, showing the fair market value of the property to be $178,500.[6] As found by the hearing judge, on November 10, 1993, respondent gave Anita a letter, in effect, offering to sell the French Camp property to her for $175,000. That letter noted that the loan on the property was about $115,000 at an adjustable rate of 11 percent and that Anita would have to pay respondent $60,000 for his equity and also pay $50,000 to reduce the loan and "[y]ou would assume and pay the balance of the loan." That letter concluded: "You should look at other homes you might be interested in to buy (sic) before you make a decision on mine. You also should consult with another attorney to make sure the purchase would be in

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[5]Anita's first knowledge that the property was for sale appears to have been an overheard conversation between respondent and his fiancee.

[6]The only other evidence of the value of the French Camp property is the testimony of respondent, who testified that, in his opinion, the fair market value of the property was $210,000 at the time of the sale to Anita.

your best interest." Although Anita did not recall seeing that letter, the hearing judge found that such a letter was delivered to her. We agree.

At the time of that letter, the French Camp property was encumbered by a deed of trust securing a "line of credit" loan from Beneficial California Inc. (Beneficial) in the maximum amount of $116,000 in favor of respondent and his former wife. The monthly payment established by the promissary note was $1,104.69 plus insurance charges. The initial provision on the deed of trust securing that loan stated "[i]f trustor voluntarily shall sell or convey the Property, in whole or part, or any interest in that Property . . . without obtaining the written consent of [Beneficial], then [Beneficial], at its option, may declare the entire balance of the loan plus interest on the balance due and payable."[7]

At the time of respondent's November 10 letter to Anita, respondent was in arrears two payments of $1,045 each on the loan from Beneficial. This was not disclosed to Anita. In correspondence to Beneficial, a letter from respondent's office advised the Beneficial representative that he had just settled a large case and provided that representative a copy of Anita's confidential settlement agreement, showing the amount of the settlement reached on behalf of Anita. While that letter was not signed by respondent, it was sent on his letterhead, from his office and bore a signature in his name followed by initials. The hearing judge found that respondent knew the letter was being sent and, following our review, we reach the same finding, although we are unable to determine that respondent knew the exact language or content of that letter.

The record shows that Anita "dropped out" of high school in the eleventh grade as the result of the birth of her first child, never held a job, had no credit record, never had a checking account or credit card and had a bill with the telephone company for approximately $500 that she

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[7]In addition, the credit line account agreement provided a prepayment penalty of six months interest on any amount of prepayment in excess of 20 percent of the outstanding balance within a 12-month period.

was unable to pay. During the course of negotiations for settlement of the wrongful death claim, respondent filed, as Anita's attorney, a dissolution of marriage action.

The record also shows that, at the same time, respondent was substantially indebted in addition to his delinquent obligations to Beneficial. He owed $22,000 to his former wife as an equalization payment on the dissolution of his marriage, $4,200 on a judgment against him, and various other bills, including salary to his secretary, law office advertizing bills and personal loans, all approximating a total of $60,000. We note however, that the equalization payment to his former wife was not due until that sale of the French Camp property and that the remaining creditors were not then pressing for payment.

The deposit and disbursement of the $250,000 settlement draft occurred on November 17, 1993, and a written agreement between respondent and Anita for the sale of the French Camp property was executed that same day. That agreement recited that respondent was Anita's attorney, that she had been advised to seek independent counsel, had time to do so, but elected not to follow that advice. That written agreement provided that Anita would accept the house in "as is" condition, that there would be no escrow or title insurance, that Anita would pay respondent $60,000 cash for his equity, pay $50,000 to Beneficial to reduce the existing loan and assume the balance of the existing loan. The agreement recited the approximate balance on the Beneficial loan to be $115,590 with an interest rate of 11 percent that was adjustable, that there were no liens on the property other than to Beneficial and that respondent would not repair an existing roof leak. The agreement further recited that Anita had been provided a recent appraisal showing the value of the property to exceed $175,000. That was the appraisal dated August 28, 1992, that we noted, *ante*, which was obtained in connection with the line of credit loan obtained by respondent and his then wife from Beneficial.

Respondent deposited the fully endorsed settlement draft into his client trust account, obtained instant credit from the bank for that deposit, wrote himself a check for $62,000,

representing his attorney's fees of 25%, and wrote a check to Anita for $186,009.[8] That check to Anita was immediately deposited into a new account opened in her name. Drawing on Anita's new account, respondent immediately wrote, and Anita signed, a check in the amount of $50,000 to Beneficial and a series of 16 checks, totaling $60,000, to various other creditors of respondent. Included in this group of 16 checks was a payment to Beneficial for the installment accruing at the end of November 1993. This left a total of $76,009 in Anita's account. Respondent promptly delivered the $50,000 check to Beneficial and gave to Anita a deed to the property in apparently recordable form.[9]

Anita testified that she did not know what an escrow was or what it was for, what title insurance was or what it was for, what function a real estate broker performed or that she should take any action to formally assume the Beneficial loan. Respondent did not order a title report or provide Anita any other evidence of the condition of title, did not provide Anita with a real estate transfer statement as required by former section 1102.6 of the Civil Code,[10] nor did he offer or provide any assistance to Anita in assuming the Beneficial loan. Respondent advised Anita that

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[8]Disposition of the balance of the $250,000 is not explained in the record. ($62,000 plus $186,009 equals $248,009.) A check in the amount of $1,991 cleared that account November 26, 1993.

[9]Respondent received a deed from his former wife, dated November 15, 1993. That deed was recorded February 17, 1994. In February 1994 Anita expressed concern to respondent about the form the of the deed she had received from him, and he provided her a new deed, again in apparently recordable form.

[10]Beginning in January 1987, former section 1102.6 of the Civil Code (enacted by Stats. 1985, ch. 1574, § 2, operative Jan. 1, 1987, and amended by Stats. 1986, ch. 460, § 5; Stats.1989, ch. 171, § 1; Stats.1990, ch. 1336, § 2; Stats.1994, ch. 817, § 2; Stats. 1996, ch. 240, § 2; Stats.1996, ch. 925, § 1; Stats.1996, ch. 926, § 1.5; Stats.2001, ch. 584, § 1) required covered residential real estate sellers to make detailed disclosures regarding the condition of the real estate using a specific form "real estate transfer disclosure statement." That statutory form disclosure statement was modified in 1990 and 1994. In 1996, a second version of the statutorily prescribed statement was enacted and became effective July 1, 1997 (Civ. Code. § 1102.6).

it was up to her whether or not she recorded the grant deed, but that if she did so, there would be an increase in taxes. He also told her that, in the event he were sued, he would let her know before any liens could attach to the property. Respondent did not know whether there was a clause in the incumbrance recorded by Beneficial allowing a buyer to assume the Beneficial loan.

A long time district manager for Beneficial made clear that Beneficial would not permit the assumption of a loan by a person with Anita's record, which included being on welfare, unemployed, the sole support of four children and with no source of income. Beneficial would not rely on Anita's bank account because there was no assurance that it would remain available in the event of a default. The monthly statements were addressed to respondent following the execution of the contract of sale and up to the time of foreclosure, and the foreclosure was in respondent's name.

Anita made the payments to Beneficial that were due through April 1994, although the March 1994 payment was made in April, and in March she contacted respondent with a request that he either buy the property back or return her money. Some time prior to the middle of March 1994, Paco and a friend came to respondent's office carrying a baseball bat resulting in a call for law enforcement. In a March 14, 1994 letter, respondent advised Anita that he would not repurchase the house. In that same letter he provided advice on the maintenance of the pool and offered to plow the weeds and repair the pool and hot tub. That letter contained the following statement: "If you don't want the house, I will help you fix it up to sell it. You have more than $110,000 in equity. The prices are now moving up. I believe if you clean up the yard, you can sell it for more than you paid for it." This was followed by a series of letters from respondent to Anita covering April to August of 1994, advising her of the consequences of her failure to make payments to Beneficial and urging her to list the property for sale in order to obtain some return on her equity in the property. In April he asked Anita not to come to the office without an

appointment because of recurring disturbances caused by Paco.[11] In the absence of further payments, Beneficial exercised its right of sale under the deed of trust in the fall of 1994, and Anita and her family were evicted from the property in December 1994.

DISCUSSION OF CULPABILITY

Respondent argues that, in selling the property to Anita, he complied with the requirements of rule 3-300, that he advised Anita to seek independent counsel, and that the hearing judge failed to give weight to the value of the property he sold to Anita. He further argues that there is not clear and convincing evidence of his moral turpitude in violation of section 6106 in his entering into that transaction with his client and contends that the evidence does not support a finding of violation of section 6068 , subdivision (e), as he claims there is no evidence that he provided Beneficial with the confidential information concerning Anita's settlement. Finally, he argues at length that the hearing judge committed error in not allowing him to testify as an expert on real estate matters.

On the other hand, the State Bar urges that respondent committed an additional violation of section 6106 in sending the confidential settlement agreement to Beneficial, and is culpable of two additional violations of that section in his alleged untruthful responses to State Bar investigators. Finally, it urges that respondent is culpable of failing to support state law in violation of section 6068, subdivision (a) by failing to provide Anita with the disclosures required by Civil Code section 1102 et seq.

We first address the arguments of respondent, followed by our discussion of the position urged by the State Bar.

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[11]We note that, in February 1994, Anita closed her account with the bank, withdrawing somewhere between $10,000 and $16,000.

COUNTS ONE AND TWO, RULE 3-300 (BUSINESS TRANSACTION WITH A CLIENT) AND SECTION 6106 (MORAL TURPITUDE)

When an attorney enters into a business transaction with a client, the attorney must, at his or her peril, comply with rule 3-300.[12] A violation of any part of that rule gives rise to culpability. (Cf. *Read v. State Bar* (1991) 53 Cal.3d 394, 411[construing the predecessor to rule 3-300, whose language was substantially identical to that of the current rule 3-300].) "The relationship between an attorney and client is a fiduciary relationship of the very highest character. All dealing between an attorney and his client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for any unfairness [citation.]." (*Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) "When an attorney-client transaction is involved, the attorney bears the burden of showing that the dealings between parties were fair and reasonable and were fully known and understood by the client. [citation.]" (*Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 372-373.)

With these principles in mind, we look to the facts and circumstances of the transaction between respondent and Anita. Respondent knew that any significant recovery in the wrongful death action would terminate even her financial aid from AFDC. By the time of the settlement, he knew that Anita was, at best, naive in financial matters, if not irresponsible.

On the other hand, respondent was two months behind in making payments on the loan from Beneficial and had assured Beneficial that he was receiving money from Anita's settlement, had made an unsuccessful effort to sell the property some three years earlier and was indebted to

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[12]That rule provides: "[An attorney] shall not enter into a business transaction with a client; . . . unless each of the following requirements have been satisfied: [¶] (A) The transaction . . . and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and [¶] (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and [¶] (C) The client thereafter consents in writing to the terms of the transaction . . ."

others, including his secretary, his former wife[13] and a judgment creditor for a total in excess of $60,000. For all practical purposes, the deposit of the settlement funds, the agreement for the sale of the property and the disbursement of the funds occurred simultaneously. On that same day, respondent delivered a grant deed to the property to Anita with the advice that, if she recorded it, her property taxes would be increased. He made no mention of the documentary transfer tax that would be imposed at the time of recording.

At the time of delivering the deed to Anita, respondent had not recorded the deed from his former wife conveying her interest in the French Camp property to him.[14] While he claimed to have personally done a title search to satisfy himself that he was conveying good title, there was no evidence of the extent of that search or what he included in that purported search. Respondent testified that he did not know of the "Notice of Code Violation" recorded by the San Joaquin County Redevelopment Department, giving notice of code violation consisting of building without a permit and electrical wiring without a permit. Nor did respondent have any concern for the recorded deed of trust that clearly provided that, if he should voluntarily divest himself of title, Beneficial could declare the entire balance of the loan due and payable.

Respondent testified that such "due on sale" provisions were not enforceable, and he was not concerned with whether Anita could assume the Beneficial loan. Respondent's understanding of the law is incorrect, as well established authority shows. In 1982 the Garn-St. Germain Depository Institutions Act (12 U.S.C. § 1701j-3) preempted state control, making all but a few "due on sale" clauses in deeds of trust nationwide enforceable, rendering ineffective *Wellenkamp v. Bank of America* (1978) 21 Cal.3d 943. (See 3 Witkin, Summary of Cal. Law (9th ed. 1987)

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[13]At least a portion of the sums due his former wife did not become payable until the sale of the French Camp property.

[14]The record does not show whether the decree of dissolution that may have conveyed the property to respondent was recorded.

Security Transactions in Real Property §81, pp. 586-588; 4 Millar & Starr (3d ed. 2000) §10:108, p. .) We note that the Beneficial encumbrance was not a "purchase money deed of trust" and thus Beneficial was not precluded by Code of Civil Procedure section 580b from seeking a judicial foreclosure, that may not limit the recovery to the value of the property. This left Anita at risk in that Beneficial had the option, on learning of the sale by respondent, to declare the balance on the note secured by the deed of trust due and exercising its right of sale on the deed of trust or initiating a judicial foreclosure under Code of Civil Procedure section 725a.

For purposes of his own, and in contravention of normal business practice, respondent prepared for Anita's signature some 13 or 14 individual checks totaling $60,000, the amount he was to receive for his equity in the French Camp property, payable to his creditors directly from Anita's account. While respondent was entitled to a down payment of $60,000, such unique procedure was totally without benefit to Anita. While it is true conditioning the sale to Anita on the payment by her of $50,000 to Beneficial increased Anita's equity, to her benefit, it did not serve to reduce the monthly payment she was to make to Beneficial, or otherwise reduce her current cash demands to make her more secure in her ownership of the property. It did, however serve to reduce respondent's risk in the event Beneficial elected to undertake a judicial foreclosure rather than exercise their rights under the power of sale in the deed of trust.

Respondent argues that he did give Anita notice in writing recommending that she consult with another attorney as required by rule 3-300, and we have found that to be true. Respondent complains that the hearing judge gave scant attention to the value of the property at the time of Anita's purchase. Because respondent has the burden to prove that the transaction was fair, he had the burden to prove the price Anita paid for the property was not excessive compared to the fair market value. The only evidence before us, as to the property's fair market value, is an appraisal estimating the value at $178,500 dated approximately one year before the sale and respondent's testimony placing the fair market value at $210,000. Thus, we must weigh the

transaction with the view that the sale price was in the range of the fair market value of the property. This record does not demonstrate that the fundamental requirement of rule 3-300 has been complied with. The heart of that rule requires that the terms of the transaction be both "fair and reasonable to the client." The fact that the sale price was at or about the fair market value does not constitute compliance with that basic requirement. The question is not merely whether the sale price was fair and reasonable in an abstract sense, but rather whether the entire transaction, in the language of rule 3-300, was "fair and reasonable to the client." Further, we must consider all of the circumstances of the client to determine if the transaction was a prudent investment for a person in her circumstances. (*Rose v. State Bar (1989)* 49 Cal.3d 646, 662-663.) In weighing the circumstances of the transaction, we take particular note of the observation of the Supreme Court in *Hunniecutt v. State Bar, supra,* 44 Cal.3d at page 370; that "[a] client who receives the proceeds of a judgment or settlement will often place great trust in the investment advice of the attorney who represented him in the matter. This is especially likely when the client is unsophisticated and a large amount of money is involved. This trust arises directly from the attorney-client relationship, and abuse of this trust is precisely the type of overreaching that rule 5-101 [which was the predecessor to rule 3-300] is designed to prevent." Although we do not find a breach of trust in respondent's dealings with Anita, we do find there are a number of areas on the periphery of the transaction that preclude it from being fair and reasonable to Anita.

It is clear that, at the time of the sale, the property was encumbered with a deed of trust containing a "due on sale" clause which, based on the record before us, was enforceable. This information was not given to Anita; nor was Anita informed that Beneficial had the apparent right to collect the entire balance due on the promissory note secured by the French Camp property or to exercise their right of sale under the deed of trust as the result of the sale. Anita was not provided title insurance; she was not informed that such insurance was usual and customary; nor was she advised as to the purposes or benefits of such insurance. She was not advised to consult a

real estate broker; nor was she informed of the services such a broker might provide her. She was not given the option of having the transaction handled through a formal escrow as is customary; nor was she advised of the services such an escrow agent might provide. She was not advised of the fact that a notice of code violations had been recorded, or of the effect that that recording might have on her future use, improvement or sale of the property. She was given an option not to record the deed from respondent on the basis that such a recording would trigger a reassessment of the property and a probable increase in taxes. She was not advised that by failing to advise the county assessor of the transfer of the title she subjected the property to a later assessment for escaped taxes, along with interest and penalties. For property tax purposes a deed need not be recorded, but Revenue and Taxation Code section 480 mandates, with exceptions not here relevant, that a buyer file a "change of ownership statement" within 45 days of the date of change of ownership. The failure to file such statement results in a statutory penalty of $100 or 10 percent of the assessed taxes. (Rev. & Tax. Code, § 4809, subd. (c).) Finally, respondent failed to provide Anita with the disclosure statement as mandated by former section 1102.6 et seq. of the Civil Code.

Respondent argues that each of these omissions was for the purpose of reducing the cost to Anita. What he fails to acknowledge is that Anita was not given the opportunity to exercise any choice in these matters. She did not know what title insurance was, did not know what escrow was, did not know what a real estate broker did, and had no idea of the risks she was assuming because of the rights of Beneficial to take action against the property. Further, respondent's arguments concerning costs savings are only partially true because in some cases he would have typically borne all or part of the expenses (brokers commission typically paid out of the proceeds of sale - escrow charges, etc.). We conclude that under the circumstances, the terms of the transaction were not fully disclosed to Anita, nor were all of the terms transmitted in writing to Anita in a manner that should have reasonably been understood by her.

When these deficiencies in the conduct of respondent are combined with the relationship between the parties and the manner in which the transaction was carried out, it is clear that respondent has failed to sustain " the burden of showing that the dealings between parties were fair and reasonable and were fully known and understood by the client [citation.]." (*Hunniecutt v. State Bar, supra,* 44 Cal.3d at 372-373.)

We cannot help but conclude that at least a partial purpose of respondent entering into the agreement for the sale of his long time home and office property was for his personal benefit, and not that of Anita. He had a fiduciary duty to work for Anita's benefit alone. (Hunniecutt v. State Bar, *supra, 44 Cal.3d 362.*) And that duty was clearly breached by the terms of the agreement and manner in which it was handled. As we have noted, respondent failed to disclose many potential problems with the sale and the assumption of the loan, the risks of no title insurance and the risks of not recording the deed. It is obvious that Anita was not otherwise aware of these risks. Nor can we overlook the manner in which the transaction was handled, occurring simultaneously with the disbursement of the proceeds of the settlement of Anita's wrongful death case, the opening of Anita's first bank account and the disbursement of funds directly to respondent's creditors. Each of these factors are considered and contribute to our findings that respondent was overreaching and acting in at least part for his own benefit. We conclude that the transaction was a breach of a of fiduciary obligation and is precisely what rule 3-300 is designed to prevent.

Respondent argues that the hearing judge erred in not permitting him to qualify as an expert on real estate transactions. The errors of law we have outlined impeach respondent's qualifications as an expert, but even aside from that, we find no abuse of discretion on the part of the hearing judge in refusing to qualify respondent as an expert. "The trial court has broad discretion to determine whether a particular witness qualifies to testify as an expert. *Douglas v. Ostermeier* (1991) 1 Cal.App.4th 729, 738, ..." (1 Jefferson Cal. Evidence Benchbook, (Cont. Ed. Bar 3d ed. 1997), § 29.18, p. 585.(hereafter Jefferson).) It is equally clear that when the trier

of fact is able to form a conclusion from the evidence with the same intelligence as an expert, expert testimony is not admissible. (*McCleery v. City of Bakersfield* (1985)170 Cal. App. 3d 1059, 1074, fn. 10; Jefferson, § 29.23, p. 587.) In any event, the hearing judge gave respondent wide latitude in his testimony, allowing him to voice many opinions on his transactions with Anita. We find no abuse of discretion in the hearing judge's refusal to qualify respondent in real estate transactions.

In addition to the charge of a violation of rule 3-300, respondent is charged with moral turpitude in selling the French Camp property to Anita. We do not see respondent's conduct on this record as venal, intentionally dishonest or corrupt. The evidence demonstrates that the property was worth at least what Anita paid for it and respondent appeared substantially motivated to see Anita enjoy the property as owner, which she strongly desired. Moreover, not every wilful violation of rule 3-300 warrants a finding of moral turpitude. But those points do not exonerate respondent of the moral turpitude charges before us. For many years, moral turpitude has been broadly defined. (E.g., *In re Mostman* (1989) 47 Cal.3d 725, 736-737; *In re Strick* (1983) 34 Cal.3d 891, 901-903; *In re Higbie* (1972) 6 Cal.3d 562, 569-570.) Moral turpitude typically occurs whenever an attorney intentionally breaches a fiduciary duty to a client. (*Hunniecutt v. State Bar, supra,* 44 Cal.3d 362, 372-373; *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 472-473), and may occur even if an attorney acts non-deliberately to breach a fiduciary duty to a client where the breach occurs as a result of gross carelessness and neglect. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208, citing, inter alia, *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020.). As we have discussed in detail in connection with respondent's violation of rule 3-300, *ante,* there was ample evidence demonstrating his violation of his fiduciary duty to his client, arising from the unfairness of the manner of the handling and the peripheral aspects of the transaction, and that the transaction was, at least in part, for his own

benefit. As such, we are compelled to the conclusion that respondent violated section 6106 in connection with the sale of his property to Anita.

COUNTS THREE AND FOUR, SECTION 6068, SUBDIVISION (e) (MAINTAIN CONFIDENCES OF CLIENT), AND SECTION 6106 (MORAL TURPITUDE)

In counts three and four, respondent is charged with violating his client's confidence by disclosing to Beneficial the amount of Anita's settlement of her wrongful death claim to Beneficial and for moral turpitude in that conduct. As we have noted, respondent denied authoring the letter to Beneficial enclosing the confidential settlement agreement resolving Anita's wrongful death claim. The hearing judge concluded that, at a minimum, respondent knew that letter was being sent from his office on his letterhead and that it contained a copy of, at least, the greater portion of the confidential settlement agreement. We concur in that finding, and further find that his knowledge of the sending of that letter renders him culpable of a violation of section 6068, subdivision (e).

Following our consideration of the specific language of section 6068 subdivision (e), we, contrary to the finding of the hearing judge, find that respondent is culpable of moral turpitude in permitting his office to provide a copy of Anita's confidential settlement agreement to Beneficial. That section requires an attorney "[t]o maintain inviolate the confidence, *and at every peril to himself or herself to preserve the secrets, of his or her client.*" (Emphasis added.) The disclosure of the terms of that agreement placed Anita at risk of action by the insurances company that was a party to that settlement agreement. The sole purpose of providing Beneficial with information concerning Anita's settlement was to aid respondent in gaining time in which to bring his delinquent payments current, in violation of that subdivision of section 6068. In doing so he placed his interests above those of his client in violation of section 6106.

COUNTS 5 AND 6, SECTION 6106 (MORAL TURPITUDE IN RESPONSE TO INVESTIGATIVE LETTERS)

In count 5, the State Bar charges that respondent lied in his response to an investigative letter sent by the State Bar, dated May 13, 1996, when he stated that he had not deposited Anita's settlement check in his trust account, but that at the bank's suggestion he had divided the settlement, deposited his fee in his general account, less $2,500 that was paid directly to him, and deposited $186,000 into Anita's account. As the record shows the entire $250,000 was deposited into respondent's trust account, from which respondent's fee was taken and the balance transferred to Anita's newly opened account. While respondent's response to the State Bar's letter was not accurate, it is true that none of the funds came to rest in respondent's trust account. It is clear that respondent's response to the State Bar was negligent, but we do not find the gross negligence necessary to elevate that conduct to moral turpitude. Further, we find no benefit to respondent, either expected or actual that suggests a willful attempt to mislead the State Bar.

In count 5, the State Bar also charges respondent lied in his response to the May 13, 1996, letter when he stated that he paid Anita's December, 1993 payment as a gift. We disagree. It is true that the payment made on November 17, 1993, covering the payment due November 28, 1993, was drawn on Anita's new account along with 15 or 16 additional checks, all prepared by respondent. The total of these checks represented the $60,000 that Anita paid respondent for the sale of the French Camp property. Thus, while the check was signed by Anita and drawn on her account, it did represent a portion of funds that were due respondent for the sale of the property under the terms of the agreement between them.

We conclude there is no clear and convincing evidence of moral turpitude in respondent's letter in answer to the State Bar's letter of inquiry dated May 13, 1996.

In count 6, The State Bar charges that in response to a July 2, 1997,[15] letter, respondent lied when he stated that after the sale to Anita, she assumed "the [Beneficial] note and mortgage as a part of our Contract of Sale. . . .They billed her for the payments after that."

Under the "Contract of Sale" for the French Camp property, paragraph 7 provided that Anita "also agrees to assume and pay the loan at Beneficial . . . . " Thus, as between respondent and Anita, she had assumed the loan. It is equally clear that as between Anita and Beneficial no such assumption took place. Standing alone, such a statement did not show that respondent was referring to a formal assumption by Anita of respondent's obligations to Beneficial when his response to the July 2, 1997, inquiry by the State Bar was made.

It is clear that Beneficial never billed Anita for the payment on the property and that they continued to bill respondent. It is equally clear that respondent knew that at the time of his response to the State Bar investigative letter of July 2. Contrary to the holding of the hearing judge, we find that this evidence, combined with respondent's ambiguous statement concerning Anita's assumption of the loan, shows an intent to mislead the investigator into believing that Anita had successfully assumed respondent's obligations under the Beneficial loan. We find that such a deliberate attempt to mislead a State Bar investigation constitutes moral turpitude in violation of section 6106.

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[15]We invite attention to two factors that appear to have unduly prolonged the resolution of this matter. First, we note that the matter was taken under submission on March 1, 2000, and the decision of the hearing judge was not filed until January 22, 2001, in clear violation of rule 220(b), Rules of Procedure of the State Bar. Second, the first investigative letter to respondent was dated May 13, 1996, while the record shows no follow up on that investigation until August 18, 1997, some 15 months later. These factors, in combination, represent a delay of almost 26 months, the majority of which appear unjustified. While the delay is not jurisdictional (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 396), it is an unacceptable delay in public protection and determining the rights of respondent.

COUNT NINE, SECTION 6068, SUBDIVISION (a) (FAILURE TO SUPPORT STATE LAW)

The State Bar contends that respondent's failure to provide Anita with the disclosure statement required by Civil Code section 1102 et seq. constitutes a violation of section 6068, subdivision (a). That subdivision requires an attorney to support the Constitution and laws of the United States and of this state. The hearing judge concluded that because the contract of sale with Anita contained a provision that the French Camp property was sold "as is," Anita waived the requirements of Civil Code section 1102 et seq. and respondent was not required to comply with the provisions of Civil Code section 1102.6 as it then existed. We disagree with the hearing judge's conclusion regarding a waiver of the Civil Code section, but reach the same conclusion regarding respondent's culpability under this charge using different reasoning.

It is true that at the time of respondent's sale of the French Camp property the apparent controlling law permitted a waiver of the requirements of Civil Code section 1102 et seq. (*Loughrin v. Superior Court* (1993) 15 Cal. App.4th 1188.) However, as *Loughrin* notes at page 1195, "a knowing and explicit waivers of the benefits of section 1102 et seq. can be effective." We conclude that there was neither a knowing nor an explicit waiver of those sections by Anita in the contract of sale. Anita had no knowledge of those Civil Code sections; nor is there any evidence that the existence or import of those sections was explained or described to her. However, this omission by respondent was charged in count one as one of the elements constituting his violation of rule 3-300 and is one of the factors that we use to determine that there was a violation of rule 3-300 as charged in that count. To again rely on that identical failure to provide a disclosure statement as a separate ethical violation is not proper. (Cf. *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 279.) We conclude that respondent is not culpable of a violation of section 6068, subdivision (a) as charged in count nine.

DISCIPLINE

In determining discipline we look first to mitigating and aggravating circumstances, each of which must be established by clear and convincing evidence (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 699; Std.1.2(b), (e).).

MITIGATION AND AGGRAVATION

At the time of the found misconduct respondent had practiced in this state for 26 years without prior discipline. "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269 [20 years without complaint]; Std. 1.2(e)(i).) We agree with the hearing judge's finding that there is no clear and convincing evidence of significant pro bono activities. We note that respondent has not pursued that issue on appeal.

The hearing judge found that respondent's misconduct was aggravated by harm caused to Anita by that misconduct. We agree in part, but believe that finding needs some additional explanation. It is true that Anita lost the property as the result of Beneficial exercising its right of sale under the deed of trust. That occurred as the result of Anita's lack of ability to manage her funds or understand that she alone was responsible for making the payments to preserve the property. It is clear that this lack of ability on the part of Anita was a risk that was foreseeable by respondent. However, we do not agree that Anita's failure to make any payments after four months, or make any effort to either save or sell the property was foreseeable. Anita must bear the primary responsibility for the loss of the property. Had she preserved any of her funds she would have at least been able to sell the property and recover at least some portion of her investment. We do not find that her inability to accomplish this small task was foreseeable. Following the sale, respondent repeatedly wrote Anita urging her to make the payments to Beneficial and offering to help clean up the property in order to permit her to sell it prior to foreclosure.

We do find respondent culpable of multiple offenses in his violation of rule 3-300 and three counts of moral turpitude, in breaching his duties to Anita in the property transaction, in sending the settlement agreement to Beneficial and in his response to the State Bar's second investigative letter. We do consider these multiple offenses to be aggravating. (Std. 1.2 (b)(ii).)

DISCUSSION REGARDING DISCIPLINE

We find that although respondent's conduct in the sale of the French Camp property to Anita involved moral turpitude, it has not been shown by clear and convincing evidence to have been either intentionally dishonest or venal. Even in retrospect, the potential for benefits to Anita and her children in the sale can be seen. It is impossible to allocate responsibility for Anita's loss between respondent and Anita. It is for this reason that we reject the State Bar's request that any recommendation for discipline include an order for restitution.

It is clear that at least some portion of the rational for respondent entering into the sale was personal benefit. Nonetheless, had Anita acted responsibly the sale could have proven beneficial to her. In this sense, the sale of the property here is distinguishable from cases in which the total control of the investment was in the hands of the attorney or his associates. (See *Rose v. State Bar, supra,* 49 Cal.3d 646 [investment in restaurant equipment]; *Hunniecutt v. State Bar*, supra, 44 Cal.3d 362 [loan to attorney, originally secured, converted to unsecured].)

Violation of the predecessor rule to 3-300 has resulted in a wide range of discipline, from private reproval to two years' actual suspension. (*Hunniecutt v. State Bar*, supra. 44 Cal.3d at p. 373.) In arguing that respondent be actually suspended for two years as the result of his misconduct, the State Bar relies on *Rose v. State Bar, supra,* 49 Cal.3d 646, *Beery v. State Bar* (1987) 43 Cal.3d 802 and *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233.

In *Rose* the attorney was found culpable of willfully failing to communicate with clients, failure to promptly discharge obligations regarding client funds, improper solicitation of clients

and improper business dealings with a client. Rose withheld proceeds of a personal injury settlement from client for three years and delayed paying an expert he had hired, and then satisfied these obligations only after disciplinary proceedings had been commenced against him. In additional matters, Rose was found culpable of failing to promptly return a client's file and culpable of soliciting the victim of a helicopter crash on the victim being released from intensive care, then failing to communicate with him and another client involved in that same crash. Also, Rose settled a wrongful death action on behalf of the deceased's widow. He then persuaded the widow to invest $70,000 of her approximately $93,000 settlement in a restaurant franchise without disclosing that he was receiving compensation as a promoter for that franchise. Rose was actually suspended for two years.

In *Beery v. State Bar, supra,* 43 Cal.3d 802 the client's personal injury action was settled for $250,000. The attorney solicited a loan from the client for a satellite venture without telling the client of his personal involvement in the venture or other material facts including the fact that funds were not available from other sources. The attorney personally guaranteed the investment, although he knew he could not perform on that guarantee. The attorney was found culpable of moral turpitude in soliciting the loan. In imposing a two-year actual suspension, the Supreme Court noted that the attorney persisted in his failure to recognize the seriousness of his misconduct. A two-year actual suspension was imposed in *In the Matter of Johnson, supra,* 3 Cal. State Bar Ct. Rptr. 233 where the attorney exploited a vulnerable relative for whom she had obtained a recovery in a personal injury action by borrowing the bulk of the relative's recovery and not repaying the loan. Moral turpitude as well as serious aggravation was found and the attorney was actually suspended for a period of two years.

In *Hawk v. State Bar* (1988) 45 Cal.3d 589, the attorney obtained a deed of trust on a client's property, without complying with the predecessor to rule 3-300, to secure his fee. He was also culpable of moral turpitude by misleading the clients in the time they had to pay off their

indebtedness and changing the amount of indebtedness after the note had been executed. The Supreme Court adopted a recommendation of six months actual suspension, noting that there was mitigation and that, at that time, the application of the rule to Hawk's circumstances was a matter of first impression.

On the other hand, in *Connor v. State Bar* (1990) 50 Cal.3d 1047, the review department of this court recommended that the attorney be actually suspended for two years, but the Supreme Court rejected that recommendation and imposed the discipline of a public reproval. Connor had acquired title to the client's property in Lake Arrowhead and then obtained a home equity loan on the property, falsely stating on the loan application that his address was that of the Lake Arrowhead property, that he was then renting and buying the property from the client, and, by a check mark, that he intended to occupy the property as his primary residence. He then provided the proceeds of the loan to the client to avoid foreclosure. In light of the attorney's strong testimony that he did not intend to mislead the lender, the Supreme Court determined that the evidence did not support the review department's finding that Connor intended to deceive the lender.

In *Hunniecutt v. State Bar*, supra, 44 Cal.3d 362, the State Bar hearing panel recommended actual suspension for 90 days and that Hunniecutt make restitution. The Supreme Court adopted that recommendation. In that case, the attorney had abandoned two clients and violated the predecessor to rule 3-300. He persuaded his client, by personally guaranteeing the loan, to invest the proceeds of a personal injury settlement that he obtained for the client in an unsecured real estate transaction in which Hunniecutt had an interest. The real estate venture resulted in large losses to the attorney, and he was unable to repay the loan. The Supreme Court affirmed a finding of moral turpitude.

In *Ritter v. State Bar* (1985) 40 Cal. 3d 595, it was found that, although the transaction was reasonable, there was a violation of the predecessor to rule 3-300, because no opportunity was

given for the client to discuss the transaction with a third person. There, the loan agreement between Ritter and the client was signed by the client upon presentation. Ritter was suspended for 60 days. In *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, the attorney loaned his client $100,000 without complying with rule 3-300. Thereafter, he represented the client, sued the client and was a co-defendant with the client, resulting in repeated violations of the Rules of Professional Conduct, but no finding of moral turpitude. In mitigation Lane showed 25 years of practice without discipline and a good reputation in the community. Lane was suspended for 60 days.

In considering the cases relied on by the State Bar, we find that they demonstrate more egregious misconduct than that before us. In both the *Berry* and *Johnson* matters the attorney was found culpable of moral turpitude in the transaction with the client. While no moral turpitude was found in the attorney's transaction with his client, in *Rose v. State Bar,* supra, 49 Cal.3d 646 there was significant, if not controlling, additional misconduct resulting in a two-year actual suspension. Further, in each of the cases relied on by the State Bar, there was far less fairness, or potential for benefit to the client, in the dealings between the attorney and client.

Although we find no case setting forth facts that directly guide us, we look to *Hawk, Hunniecutt, Ritter* and *Conner* for assistance. In *Hunniecutt* it appears that the transaction between the attorney and client lacked the potential for fairness and reasonableness that existed in respondent's sale of the French Camp property to Anita. In our judgement these findings of three counts of moral turpitude make the present case more serious than *Hunniecutt.* In *Conner*, the Supreme Court rejected the finding of moral turpitude and the recommended two-year period of actual suspension and imposed a public reproval. Again in *Ritter*, the Supreme Court affirmed the transaction was fair and reasonable, but also affirmed that there was a violation of the rule concerning transactions between attorney and client. On balance, we find respondent's action to

have been more egregious than that of the attorneys in either *Ritter* or *Hunniecutt*, and roughly equivalent to the misconduct of the attorney in *Hawk*.

Therefore, we adopt the recommendation of the hearing judge that respondent Thomas Oscar Gilles be suspended from the practice of law for a period of three years, that execution of that three-year suspension be stayed, and that he be placed on probation for three years on each of the conditions recommended by the hearing judge in his decision filed on January 22, 2001, including the condition that respondent be actually suspended from the practice of law for six months.

We also recommend that respondent be ordered to comply with rule 955 of the California Rule of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calender days, respectively, after the effective date of the Supreme Court's order in this matter.

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court's order in this matter and that he be ordered to furnish satisfactory proof of his passage of that examination to the State Bar Probation Unit within that one-year period.

COSTS

Finally, we recommend that costs be awarded to the State Bar pursuant to Business and Professions Code section 6068.10 and that such costs be made payable to accordance with Business and Professions Code section 6104.7.

OBRIEN, Judge Pro tem.

We concur:

STOVITZ, P.J.
WATAI, J.

Case No. 96-O-02494

In the Matter of Thomas Oscar Gillis

Hearing Judge

Eugene E. Brott

Counsel for the Parties

For the State Bar of California:	Andrea T. Wachter Office of the Chief Trial Counsel The State Bar of California 180 Howard St. San Francisco, CA 94105
For Respondent:	Thomas Oscar Gillis, in Pro. Per. 4212 N. Pershing Ave., #A21 Stockton, CA 95207

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 April 15, 2002, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED APRIL 15, 2002

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

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

THOMAS OSCAR GILLIS
4212 N PERSHING AVE #A21
STOCKTON CA 95207

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

ANDREA T WACHTER, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 15, 2002.**

Rosalie Ruiz
Case Administrator
State Bar Court

State Bar Court of the State Bar of California
Hearing Department ☐ Los Angeles ☒ San Francisco

Counsel for the State Bar	Case number(s)	(for Court's use)
Office of the Chief Trial Counsel Wonder J. Liang SBN 184357 180 Howard Street San Francisco, California 94105 (415)538-2372	99-O-13689 [NOT FILED] PUBLIC MATTER	FILED MAR 22 2001 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent In Pro Per Thomas Oscar Gillis SBN 40186 4212 N. Pershing Avenue, Suite A21 Stockton, California 95207 (209) 473-7066		
In the Matter of THOMAS OSCAR GILLIS Bar # 40186 A Member of the State Bar of California (Respondent)	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL ☐ PRIVATE ☒ PUBLIC ☐ PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted June 6, 1967 (date).

(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 and order consist of 8 pages.

(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. (Check one option only):

☒ costs added to membership fee for calendar year following effective date of discipline (public reproval)
☐ case ineligible for costs (private reproval)
☐ costs to be paid in equal amounts 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 under "Partial Waiver of Costs"
☐ costs entirely waived

EXHIBIT
tabbies 2

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

(Stipulation form approved by SBC Executive Committee 10/16/00)

(8) The parties understand that:

(a) A private reproval imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquires and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) A private reproval imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) A public reproval imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 96-O-02494-EEB

(b) ☒ Date prior discipline effective Pending at Review Department.

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct Rule 3-300; Business & Professions Code sections 6106 and 6068(e).

(d) ☒ degree of prior discipline Recommended Discipline - THREE (3) YEARS suspension, stayed, THREE (3) YEARS probation including SIX (6) MONTHS actual suspension.

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

(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.

(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 to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(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) ☐ Private reproval (check applicable conditions, if any, below)

(a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).

(b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

(2) ☒ Public reproval (check applicable conditions, if any, below)

E. Conditions Attached to Reproval:

(1) ☒ Respondent shall comply with the conditions attached to the reproval for a period of TWO (2) YEARS.

(2) ☒ During the condition period attached to the reproval, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. If the first report would cover less than thirty (30) days, that report shall be submitted on the next following 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 condition period and no later than the last day of the condition period.

(5) ☐ Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.

(6) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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 conditions attached to the reproval.

(7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.

☐ No Ethics School ordered.

(8) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.

(9) ☒ Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE") , administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproval.

☐ No MPRE ordered.

(10) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(11) ☐ Other conditions negotiated by the parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: THOMAS O. GILLIS

CASE NUMBER(S): 99-O-13689

FACTS AND CONCLUSIONS OF LAW.

Facts: Count One: Case No. 99-O-13689

1. On April 30, 1999, Mr. Robert A. Hunt ("Hunt") paid Respondent $1500.00, with a personal check no. 364, to defend him in a criminal matter, People v. Hunt, San Joaquin County Superior Court, case no. MM022072A, in which he was charged with driving under the influence ("DUI"). Respondent also agreed to represent Hunt in the Department of Motor Vehicles' ("DMV") hearing.

2. On May 13, 1999, Respondent failed to appear at Hunt's misdemeanor arraignment resulting in a $15,000 bench warrant being ordered for the arrest of Hunt.

3. On May 27, 1999, Respondent appeared in court on Hunt's behalf, recalled the bench warrant and continued the case to June 16, 1999.

4. On June 16, 1999, Hunt entered a plea of guilty to driving under the influence with a blood alcohol level of .08% or greater. Hunt also gave Respondent his papers regarding the DMV hearing scheduled for June 22, 1999.

5. On June 22, 1999, Respondent failed to appear at Hunt's DMV Hearing. DMV suspended Hunt's driver's license and required the re-issuance of Hunt's license contingent upon his completion of an alcohol abuse treatment program.

Conclusions of Law: Count One: Case No. 99-O-13689

By not appearing at Hunt's misdemeanor arraignment and not appearing at Hunt's DMV hearing, Respondent recklessly failed to perform legal services competently, in violation of Rules of Professional Conduct, rule 3-110(A).

Facts: Count Two: Case No. 99-O-13689

6. The allegations contained in Count One are incorporated by reference.

7. Respondent did not inform Hunt that he did not attend Hunt's DMV hearing on June 22, 1999.

8. Hunt did not discover Respondent's failure to appear at the DMV hearing until, on or about July 7, 1999, when he received the Notification of Findings and Decision from the DMV.

Conclusions of Law: Count Two: Case No. 00-O-10964

By not informing Hunt that he did not appear at the DMV hearing, Respondent wilfully failed to communicate significant developments to Hunt in a matter for which he was retained to provide legal services in violation of Business and Professions Code, section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was February 22, 2001.

This Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving the Public Reproval will not act as a basis for violating Respondent's pending probation on State Bar Court case no. 96-O-02494.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 22, 2001, the estimated prosecution costs in this matter are approximately $ 1,214.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

3/7/2001
Date

Thomas O'Gillis
Respondent's signature

THOMAS O. GILLIS
print name

Date

Respondent's Counsel's signature

print name

3/8/2001
Date

Deputy Trial Counsel's signature

WONDER J. LIANG
print name

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

3/20/01
Date

Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 22, 2001, 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:

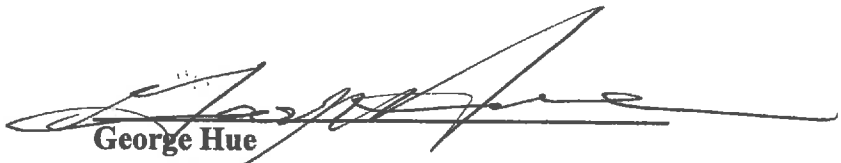
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS O GILLIS
4212 N PERSHING AVE #A21
STOCKTON, CA 95207

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 22, 2001.**



George Hue
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 May 25, 2010
State Bar Court, State Bar of California,
Los Angeles

By _____
Clerk

DECLARATION OF SERVICE BY MAIL

RE: GILLIS
CASE NO: 16-O-10780, 17-O-02624, 17-O-04790

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

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

in a sealed envelope placed for collection and mailing at San Francisco, on the date shown below, addressed to:

Thomas Oscar Gillis
Thomas O Gillis, Attorney
1006 H St., Suite 3
Modesto, CA 95354-2384

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

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

DATED: May 10, 2019

SIGNED: Dawn Williams
Dawn Williams
Declarant

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 Los Angeles, on June 7, 2019, 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:

Thomas O Gillis, Attorney
1006 H St Ste 3
Modesto, CA 95354-2384

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

Danielle A. Lee, Enforcement San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 7, 2019.

Paul Songco
Court Specialist
State Bar Court