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State Bar Court of California
Hearing Department
Los Angeles
DISBARMENT **PUBLIC MATTER**

<p>Counsel for the State Bar</p> <p>Hugh G. Radigan Senior Trial Counsel 845 South Figueroa Street Los Angeles, Ca. 90017-2515 (213) 765-1206</p> <p>Bar # 94251</p>	<p>Case Number(s): 16-O-13656 17-O-01041-CV</p>	<p>For Court use only</p> <p align="center">FILED MAR 25 2019 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Kenneth E. Ostrove 5650 Saint Clair Ave. Valley Village, Ca. 91607-1725 (818) 505-1214</p> <p>Bar # 111222</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: KENNETH EDWARD OSTROVE</p> <p>Bar # 111222</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 21, 1983**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **17** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. 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 are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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

- (1) **Prior record of discipline:**
- (a) State Bar Court case # of prior case: **14-O-01379, 14-O-02766 and 14-O-03650. See page 12-13 and exhibit 1.**
 - (b) Date prior discipline effective: **May 28, 2015**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **former Rules of Professional Conduct 3-110(A), 4-100(B)(3), 3-700(D)(2), 4-100(B)(4), 4-100(A) and Business and Professions Code section 6068(m)**
 - (d) Degree of prior discipline: **One year stayed suspension, two-year probation and 90 day actual suspension**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
Second prior: 15-PM-15232, effective date July 21, 2016, violation of Business and Professions Code section 6068(k), 120 days actual suspension. See page 12-13 and exhibit 2.
Third prior: 15-O-10800, effective January 19, 2017, violation of former Rules of Professional Conduct, rule 3-700(A)(2), one year stayed suspension, two-year probation and 30 days actual suspension. See page 12-13 and exhibit 3.

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- (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. **See page 12.**
- (10) **Lack of Candor/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 12.**
- (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.
- (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.

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

Additional mitigating circumstances:

D. Recommended Discipline:

Disbarment

Respondent is disbarred from the practice of law in California and Respondent's name is stricken from the roll of attorneys.

E. Additional Requirements:

- (1) **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. (*Atheam 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).)

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- (2) **Restitution (Single Payee):** Respondent must make restitution in the amount of \$ _____, plus 10 percent interest per year from _____, to _____ (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).
- (3) **Restitution (Multiple Payees):** Respondent must make restitution 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):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- (4) **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: KENNETH EDWARD OSTROVE

CASE NUMBERS: 16-O-13656 and 17-O-01041-CV

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 16-O-13656 (State Bar Investigation)

FACTS:

1. Respondent was retained in May 2014 by Sarah Shimoni to represent her during the probate of her husband, Ehud Shimoni's, estate. Mr. Shimoni was involved in real estate development and investing prior to his death.
2. Subsequent to Mr. Shimoni's death, multiple lawsuits were filed by investors against the estate and his wife by parties seeking to secure the return of their investments.
3. Respondent represented the estate and Ms. Shimoni in three separate lawsuits filed in Los Angeles County Superior Court including *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC587445 and *Adler v. Shimoni*, Case No. BC533836, also filed in the Los Angeles Superior Court.
4. As a result of the respondent's first prior discipline, Supreme Court order S224490, State Bar Court nos. 14-O-01379 et al., he was actually suspended for ninety (90) days effective May 28, 2015 through August 26, 2015. Pursuant to his probationary terms, respondent was obligated to comply with California Rule of Court 9.20(a) and (c) and to file quarterly probation reports.
5. On June 3, 2015, in Case No. BC533836, opposing counsel propounded discovery.
6. Plaintiff's attorney and respondent thereafter engaged in a number of e-mail exchanges discussing extensions to respond to the subject discovery through August 17, 2015. This activity took place during respondent's period of actual suspension and constituted the unauthorized practice of law.
7. On July 7, 2015, respondent filed a rule 9.20 compliance declaration with the State Bar Court pursuant to the terms of his first discipline. Therein, under penalty of perjury, respondent stated he was in full compliance with the rule requiring that he notify his opposing counsel, client and the court where Case No. BC533836 was pending of his suspension within thirty days of the effective date of his suspension, ie; June 28, 2015.
8. No such notifications were made to any of the required parties. The declaration was false.

9. On July 16, 2015, respondent filed a second rule 9.20 compliance declaration with the State Bar Court to correct issues of restitution omitted from the July 7, 2015 filing. Therein, under penalty of perjury, respondent again stated he was in full compliance with the rule requiring that he notify his opposing counsel, client and the court, where Case No. BC533836 was pending of his suspension within thirty days of the effective date of his suspension, ie; June 28, 2015.

10. No such notifications were made to any of the required parties. Respondent's declaration was false.

11. On July 20, 2015, respondent filed his quarterly report covering the period May 28 through June 30, 2015. Under penalty of perjury respondent represented that he was in full compliance with the Rules of Professional Conduct and the State Bar Act during that period of time.

12. At the time of his filing of this quarterly report, respondent was engaged in the unauthorized practice of law during that period, rendering his declaration false.

13. In compliance with his discipline probation terms, on October 12, 2015, respondent filed his quarterly report covering the period July 1 through September 30, 2015. Under penalty of perjury respondent represented that he was in full compliance with the Rules of Professional Conduct and the State Bar Act during that period of time. Respondent was engaged in the unauthorized practice of law during that period, rendering his declaration false.

14. Respondent did not serve responses to the requests for discovery in Case No. BC587445. Opposing counsel filed two motions to compel. The court set a hearing for February 23, 2016. Respondent received the motions and notice of the hearing.

15. Respondent was inactive from January 18, 2016 through February 24, 2016 pursuant to Business and Professions Code section 6007(e) for having defaulted in a pending State Bar matter, Case No. 15-O-10800.

16. On February 16, 2016, respondent advised opposing counsel he was inactive.

19. Respondent failed to advise either his opposing counsel, client or the court in the *Adler v. Shimoni* matters of his inactive status in timely fashion. Rather, respondent simply opted to file no opposition to the two filed motions to compel nor appear at the time of the originally scheduled hearing date of February 23, 2016, in Case No. BC533836. The court granted the motions.

20. It was not until March 1, 2016, that respondent filed a motion for reconsideration of the rulings of February 23, 2016, premised upon his inactive status.

21. Since opposing counsel did not so advise the court of his belated awareness of respondent's inactive status, the court granted respondent's motion for reconsideration and vacated the orders compelling response and assessing sanctions, requiring opposing counsel to renew the motions which ultimately led to the issuance of the two sanction orders of April 27, 2016.

22. In *Adler v. Shimoni*, Case No. BC533836, two court orders filed April 27, 2016, assessed sanctions against respondent solely, for his failure to respond to requests for production and failure to respond to interrogatories, each order in the amount of \$1,860, both ordered payable within twenty days, ie: May 17, 2016. Respondent did not comply with the orders.

23. By virtue of failing to comply with his duties as an officer of the court to keep the parties advised as to his status, respondent wasted valuable court time and caused additional delay and expense to his adversary.

24. On May 6, 2016, plaintiff's attorney served respondent with the April 27, 2016 minute orders.

25. On May 20, 2016, respondent promised opposing counsel that he would pay \$500 that day towards the sanctions but failed to do so. Respondent promised to produce the required discovery no later than May 24, 2016, but failed to do so.

26. On June 6, 2016, in case no. BC533836, plaintiff's attorney filed a motion for terminating sanctions which was granted July 7, 2016. The court order dated July 7, 2016, struck defendant's answer and entered her default while sanctioning respondent and defendant an additional \$1,860 payable within twenty days, ie: July 27, 2016.

27. In *Adler v. Shimoni*, Case No. BC587445, on June 28, 2016, the court sanctioned respondent and his client \$1,320 for a failure to respond to requests for production and special interrogatories, payable within ten days, ie: July 8, 2016.

28. The two orders were not complied with in timely fashion in case no. BC587445. Respondent paid the sanctions on January 11, 2017. In case no. BC533836, respondent paid the sanctions on October 26, 2016.

CONCLUSIONS OF LAW:

29. By appearing as counsel of record in *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, and negotiating extensions of time to respond to outstanding discovery between on or about June 3, 2015 and August 17, 2015, respondent held himself out as entitled to practice law and actually practiced law when respondent was not an active member of the State Bar, in violation of Business and Professions Code, sections 6125 and 6126, and thereby willfully violated Business and Professions Code, section 6068(a).

30. By respondent holding himself out as entitled to practice law and actually practicing law between on or about June 3, 2015 and August 17, 2015, when respondent knew that he was not an active member of the State Bar and by negotiating with opposing counsel during this same time to secure discovery extensions as counsel of record for defendant in *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

31. By failing to give timely and proper notice to his clients and co-counsel of the effective date of his actual suspension, by failing to give timely and proper notice to opposing counsel and adverse parties in pending matters of the effective date of his actual suspension and by failing to file with the court before which litigation was pending notice to opposing counsel/adversary parties of the effective date of his actual suspension and thereby violating the Rules of Professional Conduct and rule 9.20 of the California Rules of Court, respondent failed to comply with conditions attached to Respondent's

the California Rules of Court, respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar Case no. 14-O-01379 as follows, in willful violation of Business and Professions Code, section 6068(k).

32. By stating in writing under penalty of perjury to the State Bar Court in a declaration executed July 7, 2015, that he had notified all opposing counsel, in all matters pending on the date of the order to comply with rule 9.20 was filed, of respondent's disqualification to act as an attorney after the effective date of his suspension, and that he filed a copy of this notice with the Court before which the matter was pending, when respondent knew the statements were false, specifically, that respondent did not notify opposing counsel or file with the Superior Court notice of his suspension from the practice of law in the matter, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

33. By filing his declarations executed July 7 and July 16, 2015, with the State Bar Court in compliance with Rule 9.20 which stated under oath that he had notified all opposing counsel, in all matters pending on the date of the order to comply with rule 9.20 was filed, of respondent's disqualification to act as an attorney after the effective date of his suspension, and that he filed a copy of this notice with the Court before which the matter was pending, when respondent knew the statements were false, specifically, respondent did not notify opposing counsel or file with the Superior Court notice of his suspension from the practice of law in the matter, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, respondent sought to mislead the court or judicial officer by an artifice or false statement of fact or law, in willful violation of Business and Professions Code, section 6068(d).

34. By stating in writing under penalty of perjury within a declaration executed July 16, 2015, submitted to the State Bar of Court that he had notified all opposing counsel, in all matters pending on the date of the order to comply with rule 9.20 was filed, of respondent's disqualification to act as an attorney after the effective date of his suspension, and that he filed a copy of this notice with the Court before which the matter was pending for inclusion in its files, when respondent knew the statements were false, specifically, respondent did not notify opposing counsel or file with the Superior Court notice of his suspension from the practice of law in the matter, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

35. By misrepresenting under oath in his quarterly report to the Office of Probation of the State Bar of California for Case no. 14-O-01374, within declarations executed July 20, 2015 and October 9, 2015, that he was not in violation of the State Bar Act or the Rules of Professional Conduct when respondent knew the statements to the Probation Department of the State Bar were false, since he had not provided notice to his opposing counsel and filed the notice with the Superior Court in Los Angeles County for the civil matter, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, which was pending during respondent's suspension, as required by California Rules of Court, rule 9.20, in violation of Supreme Court Order No. S224490; and he had engaged in the unauthorized practice of law by appearing as counsel of record negotiating extensions of time to respond to outstanding discovery between June 3, 2015 and August 17, 2015, for the Los Angeles County Superior Court case, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, in willful violation of Business and Professions Code sections 6068(a) and 6106, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

36. By failing to provide written notice as required by California Rules of Court, rule 9.20(a)(4), to opposing counsel and file the notice with the Los Angeles Superior Court, for the matter, *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, which was pending on the day respondent was suspended from the practice of law and in which respondent was a counsel of record, as required by Supreme Court order no. S224490, respondent willfully violated California Rules of Court, rule 9.20.

37. By failing to provide written notice as required by California Rules of Court, rule 9.20(a)(4), to his client, Sarah L. Shimoni, and file the notice with the Los Angeles Superior Court, for the matter *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, which was pending on the day respondent was suspended from the practice of law and in which respondent was a counsel of record, as required by Supreme Court order no. S224490, respondent willfully violated California Rules of Court, rule 9.20.

38. By failing to comply with the April 27, 2016, order sanctioning him \$1,860 payable no later than May 17, 2016, directed against respondent, which respondent knew was final and binding, in the matter *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, for failure to respond to a request for production, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, and thereby willfully violated Business and Professions Code, section 6103.

39. By failing to comply with the April 27, 2016, order sanctioning him \$1,860 payable no later than May 17, 2016, directed against respondent, which respondent knew was final and binding, in the matter *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, for failure to respond to interrogatories, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, and thereby willfully violated Business and Professions Code section 6103.

40. By failing to comply with the July 7, 2016, order sanctioning him \$1,860 payable no later than July 27, 2016, directed against respondent, which respondent knew was final and binding, in the matter *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC533836, for failure to comply with discovery orders, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, and thereby willfully violated Business and Professions Code section 6103.

41. By failing to comply with the June 28, 2016, order sanctioning him \$1,320 payable no later than July 8, 2016, directed against respondent and his client, which respondent knew was final and binding, in the matter *Adler v. Shimoni*, Los Angeles Superior Court Case No. BC587445, for failure to respond to request for production and special interrogatories, respondent disobeyed or violated an order of the court requiring Respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, and thereby willfully violated Business and Professions Code section 6103.

FACTS:

42. On March 23, 2016, the Hearing Department of the State Bar Court issued a decision in State Bar case no. 15-PM-15232, finding respondent violated conditions of his probation.

43. The Supreme Court affirmed the Hearing Department discipline recommendation, and filed its order No. S224490, June 21, 2016, effective July 21, 2016.

44. That order provided that respondent comply with the probationary conditions itemized by the Hearing Department recommendation and decision filed March 30, 2016. The conditions included that respondent was required to receive psychiatric or psychological treatment a minimum of once a month and furnish satisfactory evidence that he participated in the treatment with each quarterly report he filed.

45. On September 9, 2016, respondent provide to the Office of Probation, a mental health report for treatment received in July 2016.

46. Respondent failed to obtain mental health treatment in September 2016 and failed to attach a mental health report to his quarterly report due and filed October 10, 2016. In an attached declaration to the quarterly report, respondent acknowledged he did not obtain treatment during September and that he would attempt to make that up in either October or November by scheduling an additional appointment.

47. Respondent's quarterly report due January 10, 2017, was not received until January 19, 2017. Respondent did not append to it a mental health report. Within an attached declaration respondent acknowledged attending one counseling session in October and November, but none in December.

48. Respondent's quarterly report due April 10, 2017, was not received until April 13, 2017. Attached to it was an untimely mental health report reflecting treatment sessions in October, November of 2016, January of 2017, two in February of 2017 and one in March of 2017.

49. Respondent's quarterly report due July 10, 2017, was not received until July 11, 2017. Respondent also neglected to append to it a mental health report. Within an attached declaration respondent acknowledged attending one counseling session in April and June of 2017, but none in May due to lack of funds.

50. Respondent's quarterly report due October 10, 2017, was not received until October 11, 2017. Respondent also neglected to append to it a mental health report. Within an attached declaration respondent failed to itemize any monthly treatments he attended for the same time period.

CONCLUSIONS OF LAW:

51. By failing to timely file his quarterly report due January 10, 2017, failing to attend a required mental health counseling session in December of 2016 and failing to append to the quarterly report a required mental health report; by filing his quarterly report due October 10, 2016 and failing to append to the quarterly report a timely required mental health report; and failing to timely file his quarterly report due April 10, 2017, and failing to append to the quarterly report a timely required mental health report; and failing to timely file his quarterly report due July 10, 2017, failing to attend a required mental health counseling session and failing to append to the quarterly report a required mental health report; and failing to timely file his

report due July 10, 2017, failing to attend a required mental health counseling session and failing to append to the quarterly report a required mental health report; and failing to timely file his quarterly report due October 10, 2017, failing to attend all required mental health counseling sessions and failing to append to the quarterly report a required mental health report, respondent failed to comply with conditions attached to respondent's disciplinary probation in State Bar Case no. 15-PM-15232, in willful violation of Business and Professions Code, section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct, Standard 1.5(b): Respondent committed multiple acts of misconduct, specifically Business and Professions Code sections 6103 [failure to obey court order] (four counts), 6068(a) [UPL], 6106 [moral turpitude/misrepresentations/upl](four counts), 6068(k) [failure to comply with probation conditions] (five counts) as well as two counts of violation of California Rules of Court, rule 9.20.

Indifference, Standard 1.5(k): Respondent's misrepresentations under oath to the State Bar Office of Probation concerning his compliance with rule 9.20 and his terms of probation, coupled with respondent's violation of a Supreme Court order not to practice law, evidences that respondent has no appreciation for his ethical duties and obligations to comply with the terms and conditions of his discipline order. His conduct in actively representing his clients while suspended from the practice of law demonstrates a complete lack of respect for the disciplinary process. Cumulatively, these multiple acts of misrepresentative conduct show a complete lack of insight into the seriousness of his conduct.

Prior Discipline, Standard 1.5(a): Respondent has three prior discipline cases. Effective May 28, 2015, respondent was placed on a 90-day actual suspension with a one-year stayed suspension and a two-year probation in Case Nos. 14-O-01379, 14-O-02766, and 14-O-03650 for violations involving three client matters. Respondent stipulated to misconduct in December 2014, after the State Bar filed its Notice of Disciplinary Charges in August 2014. In the first matter, respondent failed to perform competently in his client's probate matter, in violation of Rules of Professional Conduct, rule 3-110(A); failed to respond to status inquiries in May 2010, June 2013 and June 2014; and failed to inform a client of the significant development that respondent had ceased working on the client's matter between October 2010 and April 2013, in violation of Business and Professions Code section 6068(m).

In the second matter, respondent failed to respond to his client's status inquiries in 2013 and 2014, in violation of Business and Professions Code section 6068(m); did not provide an accounting of advanced fees and did not refund unearned fees to the client after the client terminated his employment in February 2014, in violation of Rules of Professional Conduct, rules 4-100(B)(3) and 3-700(D)(2); and did not cooperate in the State Bar's investigation of the client's complaint from May to October of 2014, in violation of Business and Professions Code section 6068(i).

In the third matter, respondent failed to perform competently in his client's probate matter, in violation of Rules of Professional Conduct, rule 3-110(A), failed to respond to status inquiries between July 2013 and January 2014 and in March 2014, in violation of Business and Professions Code section 6068(m); failed to provide an accounting of advanced costs after the client terminated his employment in March 2014 until December 2014, in violation of Rules of Professional Conduct, rule 4-100(B)(3); failed to promptly return unused costs to the client, in violation of Rules of Professional Conduct, rule 4-100(B)(4); and failed to deposit advanced costs received in May 2013 into a client trust account, in violation of Rules of Professional Conduct, rule 4-100(A). Respondent acknowledges that the Stipulation Re: Facts, Conclusions of Law, and Disposition and Order Approving Actual Suspension,

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.

The second prior involved respondent's failure to comply with his probation conditions within the first discipline. This resulted in the imposition of an additional 120 actual suspension recommended by court order filed March 23, 2016, arising out of a motion to revoke probation in 15-PM-15232, as reflected in Supreme Court No. S224490, filed June 21, 2016, effective July 21, 2016. Respondent acknowledges that the California Supreme Court order attached to this stipulation as Exhibit 2 is a true and accurate record of respondent's prior discipline in this matter.

The third prior in Case No. 15-O-10800, resulted in the court finding an improper withdrawal from employment in violation of rule 3-700(A)(2) occurring during 2013. Respondent was suspended for one-year, stayed, 30 days actual suspension and a two-year probation, effective January 19, 2017. The trial court determined that the misconduct in the third discipline occurred contemporaneous with the conduct in the first discipline and determined what the discipline would have been had all the charged misconduct been brought in one case in arriving at 120 days actual suspension, with respondent being credited with the already served 90 days actual in the first discipline. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.) Respondent acknowledges that the California Supreme Court order attached to this stipulation as Exhibit 3 is a true and accurate record of respondent's prior discipline in this matter.

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

In this matter, respondent admits to committing fourteen 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.”

Under two analyses, disbarment is the appropriate result. First, respondent violated the Supreme Court’s order that he comply with California Rules of Court, rule 9.20, following his prior disciplinary matter under Supreme Court order S224490. Specifically, respondent failed to notify opposing counsel and the Los Angeles Superior Court that he was unable to practice law, then respondent falsely declared to the State Bar that he had provided the required notice. It is well settled that a violation of rule 9.20 generally warrants disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131 (“disbarment is generally the appropriate sanction for a willful violation of [former] rule 955 [now rule 9.20]”).) Moreover, a misrepresentation to the State Bar can be more serious than the underlying misconduct itself. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [“deception of the State Bar may constitute an even more serious offense than the conduct being investigated.”].) The submission of a false declaration by an attorney not only undermines the ability of the courts to rely on the accuracy of sworn statements, it also diminishes public confidence in the integrity of the legal profession. Respondent’s present inability to accurately convey the truth under oath is compelling indicia that Respondent is either unwilling or unable to reform his behavior. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Court Rptr. 646 [disbarment appropriate where prior discipline coupled with probation has not rehabilitated attorney].) In light of the false declaration of compliance by respondent, disbarment is the presumptively appropriate level of discipline in this matter.

Second, respondent’s disbarment is also warranted due to his three prior disciplinary matters. Standard 1.8(b) states that if a member has two or more prior records of discipline, disbarment is appropriate in the following circumstances unless the most compelling mitigating circumstances clearly predominate, or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. The circumstances to be considered include whether the prior discipline resulted in actual suspension, whether the priors coupled with the current misconduct demonstrates a pattern of misconduct, and the priors coupled with current misconduct demonstrates respondent’s unwillingness or inability to conform to ethical responsibilities. All of these factors have been satisfactorily met meriting the ultimate sanction of disbarment.

Respondent’s current misconduct arising out of the probation violation matter occurred between October 2016-October 2017. Respondent’s unauthorized practice occurred between June –August 2015 and his violation of multiple court orders occurred between May-July 2016. Respondent’s periods of actual suspension ran from May 28-August 26, 2015, July 21-November 18, 2016 and January 17-March 9, 2017.

Respondent’s misconduct in his first disciplinary matter, for which he received a 90-day actual suspension, occurred between May 2010 and March 2014 and involved both performance issues and client trust account violations. In his next disciplinary matter, for which he received a one-year stayed suspension and probation, with 120-days actual suspension, respondent’s misconduct occurred during 2016 and involved his failure to comply with his probation conditions. In his third disciplinary matter, respondent was found to have improperly withdrawn from employment in violation of rule 3-700(A)(2) occurring during 2013. Respondent was suspended for one-year, stayed, 30 days actual suspension and a two-year probation, effective January 19, 2017.

Premised upon the above chronology, respondent’s misconduct meriting the first discipline, occurred prior to the acts of misconduct set forth in the pending matters. In the third discipline the trial court

determined that the misconduct in the third discipline occurred contemporaneous with the conduct in the first discipline and determined what the discipline would have been, had all the charged misconduct been brought in one case in arriving at 120 days actual suspension, with respondent being credited with the already served 90 days actual in the first discipline. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Actual suspension was ordered in all of the prior disciplinary cases. The current misconduct coupled with the prior record demonstrates both a pattern and an “unwillingness or inability to conform to ethical responsibilities.”(Std. 1.8(b)(2) through (3).) Respondent’s current and prior misconduct all involve respondent’s refusal to abide by the ethical standards required of members.

In addition, respondent has no compelling mitigating circumstances that clearly predominate. In his first prior, case no. 14-O-01379 et seq., respondent was granted mitigation for no prior record, family problems, pretrial stipulation and good character. This mitigating evidence, however, was considered and given due weight. In the probation violation prior, case no.15-PM-15232, respondent was afforded mitigation for belated restitution and participation in counseling. To date, respondent has not shown any compelling mitigation that would predominate in this matter.

In his current misconduct, respondent violated multiple court orders as well as rule 9.20 and his probation. Moreover, in defiance of his first discipline, respondent continued to practice law during his actual suspension period. Respondent also violated a Supreme Court Order by practicing law while suspended and made a misrepresentation under penalty of perjury when he declared he had complied with rule 9.20 and the conditions of his probation. Additional indicia of his unwillingness or inability to conform to the standards and responsibilities of State Bar members is evidenced by his most recent probationary violations. Therefore, disbarment is the most appropriate level of discipline.

Case law supports disbarment in this case, as well. In *Morgan v. State Bar* (1990) 51 Cal.3d 598, the Supreme Court found that an attorney who had four prior disciplinary proceedings had “demonstrate[d] a pattern of professional misconduct and an indifference to this court’s disciplinary orders.” Respondent’s three priors, each increasing in their level of discipline and level of culpability, demonstrate his indifference to the Supreme Court orders and his failure to be rehabilitated. Even while serving several months of actual suspension, respondent refused to abide by the Supreme Court orders, continued to practice law, and made dishonest declarations to the State Bar. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 (disbarment appropriate where prior discipline coupled with probation has not rehabilitated the attorney).) Respondent’s current misconduct plus his three prior disciplines have not been offset by any compelling mitigation; he offers no other reason to deviate from the recommendation of the appropriateness of a greater sanction where there is found significant aggravation under standard 1.7(b). (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 261 (Std. 1.7 strictly applied when an attorney’s prior record of discipline “reveals a ‘disturbing repetitive them’ of failing to comply with ethical obligations” over several years); *In the Matter of Lawrence* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 239, 247-48 (Lawrence’s severe and extensive medical problems over the years clearly predominated and compelled “a look beyond a strict application of standard 1.7(b).”))

Notably, the Supreme Court does not strictly apply former standard 1.7 when no compelling mitigation is presented. The Court examines all factors, including the prior discipline cases, the present misconduct, and any appropriate aggravating circumstances. (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 291-92 (disbarment not recommended because Jensen’s prior misconduct overlapped, he was not a recidivist offender who failed to learn from past disciplines, and

his present misconduct was not more serious than his prior ethical misconduct).) By contrast, respondent's current and prior misconduct do not entirely overlap, as discussed above. Respondent now has practiced law unlawfully while on actual suspension and committed acts of moral turpitude, including misrepresentations to the State Bar. Additionally, respondent is a recidivist with each act of misconduct more serious than the last. He continued his misconduct despite ever-increasing discipline spread over 7-plus years. Accordingly, disbarment is appropriate and required to fulfill the purposes of attorney discipline as set forth in standard 1.3: protecting the public, the courts, and the legal profession; maintaining high professional standards by attorneys; and preserving public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 22, 2019, the discipline costs in this matter are approximately \$6,114. 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.

(Do not write above this line.)

In the Matter of: KENNETH EDWARD OSTROVE	Case Number(s): 16-O-13656 17-O-01041-CV
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SIGNATURE OF THE PARTIES

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

Mar. 5, 2019

Date

Kenneth E. Ostrove

Respondent's Signature

Kenneth Edward Ostrove

Print Name

Date

Respondent's Counsel Signature

Print Name

March 7 '19

Date

Hugh G. Radigan

Deputy Trial Counsel's Signature

Hugh G. Radigan

Print Name

(Do not write above this line.)

In the Matter of: KENNETH EDWARD OSTROVE	Case Number(s): 16-O-13656 17-O-01041-CV
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DISBARMENT ORDER

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

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

1. On page 2 of the Stipulation, at paragraph B.(1)(c), line 3, “and 6068(i)” is added after “6068(m)”.
2. On pages 8-9 of the Stipulation, numbered paragraph 31 (Count Three of the Notice of Disciplinary Charges) is deleted in its entirety, as the facts fail to establish a violation of Business and Professions Code section 6068(k). Rather, the facts support a violation of California Rules of Court, rule 9.20, for which Respondent has stipulated to culpability (see paragraphs 36 and 37 of the Stipulation). Furthermore, the requirement to comply with rule 9.20 is not a probation condition, rather it is a separate requirement imposed by the Supreme Court. Accordingly, Count Three of the Notice of Disciplinary Charges (see paragraph 31 of the Stipulation) is dismissed without prejudice.
3. On page 11 of the Stipulation, at the top of the page, “Case No. 17-O-01041” is added.
4. On page 11 of the Stipulation, at numbered paragraph 51, line 8, “and failing to timely file his” is deleted. Also, on page 12 of the Stipulation, line 1 through the word “report” on line 2 is deleted, as such language is essentially duplicative of language earlier in that same paragraph (see lines 6-8).
5. On page 12 of the Stipulation, “Aggravating Circumstances,” “Multiple Acts,” line 4, “(five counts)” is deleted and “6068(d)” is added.
6. On page 14 of the Stipulation, line 1, “admits to committing fourteen” is deleted, and in its place is inserted “committed 13”.
7. On page 15 of the Stipulation, fourth full paragraph, line 4, “level of discipline” is deleted.
8. On page 16 of the Stipulation, line 5, “ever-increasing” is deleted.

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).)**

(Do not write above this line.)

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

March 25, 2019
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG JUDGE PRO TEM
Judge of the State Bar Court

(State Bar Court Nos. 14-O-01379; 14-O-02766 (14-O-03650))

APR 28 2015

S224490

Frank A. McGuire Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

In re KENNETH EDWARD OSTROVE on Discipline

The court orders that Kenneth Edward Ostrove, State Bar Number 111222, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Kenneth Edward Ostrove is suspended from the practice of law for the first 90 days of probation;
2. Kenneth Edward Ostrove must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on December 23, 2014; and
3. At the expiration of the period of probation, if Kenneth Edward Ostrove has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

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

Kenneth Edward Ostrove must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-half of the costs must be paid with his membership fees for each of the years 2016 and 2017. If Kenneth Edward Ostrove fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

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

Witness my hand and the seal of the Court this


_____ day of APR 28 2015 20____

By: 
Deputy
Clerk

CANTIL-SAKAUYE

Chief Justice

(Do not write above this line.)

State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Diane J. Meyers Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1496 Bar # 146643	Case Number(s): 14-O-01379-LMA 14-O-02766 (inv.) 14-O-03650 (inv.)	For Court use only <div style="text-align: center;"> PUBLIC MATTER FILED  DEC 23 2014 </div> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Kenneth E. Ostrove 5200 Lankershim Blvd., Ste. 850 North Hollywood, CA 91601-3155 (818) 505-9532 Bar # 111222	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: KENNETH EDWARD OSTROVE Bar # 111222 A Member of the State Bar of California (Respondent)	(This cell is merged with the previous row's content)	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 21, 1983**.
- (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 **20** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **the two billing cycles immediately following the effective date of the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

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

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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. **See Stipulation Attachment at p. 16.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **See Stipulation Attachment at p. 16.**

(Do not write above this line.)

- (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. **Stipulation Attachment at p. 16.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct 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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(Do not write above this line.)

(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:

No prior record of discipline, family problems, pretrial and prefiling Stipulation, and good character.
(See Stipulation Attachment at pp. 16-17.)

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one year**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.

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

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

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

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct

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

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(Do not write above this line.)

- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

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

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

(Do not write above this line.)

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case Number(s): 14-O-01379, 14-O-02766. and 14-O-03650
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Medical Conditions

- a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **one time** per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for *days or* *through the* *years of* the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case Number(s): 14-O-01379, 14-O-02766. and 14-O-03650
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Law Office Management Conditions

- a. Within 30 days/ ~~months/~~ ~~years~~ of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

Other:

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case Number(s): 14-O-01379, 14-O-02766. and 14-O-03650
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Sherry Van Dyk	\$1,077.50	February 10, 2014
April Farael	\$865	March 23, 2014

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 30 days after the effective date of the discipline as to Sherry Van Dyk. As for April Farael, if restitution of \$865 is not paid by December 31, 2014, then respondent must pay the above-referenced restitution to Farael, and provide satisfactory proof of payment to the Office of Probation not later than 30 days after the effective date of discipline.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KENNETH EDWARD OSTROVE
CASE NUMBERS: 14-O-01379, 14-O-02766, 14-O-03650

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 14-O-01379 (Complainant: Deborah Callahan)

FACTS:

1. On or about August 28, 2007, Deborah Callahan (“Callahan”) employed respondent to probate her late brother’s estate, the Estate of Nolan Callahan, and gave respondent an \$800 check as advanced costs for the probate.
2. On August 28, 2007, respondent initiated the probate by filing a petition for probate and letters of administration on behalf of Callahan in the Los Angeles County Superior Court, *Estate of Nolan Callahan*, case no. BP106384.
3. On October 10, 2007, the court issued an order appointing Callahan as the administrator of the estate; on August 19, 2008, respondent filed an inventory and appraisal; on December 16, 2008, respondent filed a status report regarding the administration of the estate; and on January 28, 2009, the court granted the status report of the administrator in case no. BP106384. Respondent filed no other documents in case no. BP106384 on behalf of Callahan.
4. On January 28, 2010 and March 27, 2010, Callahan faxed documents needed to close the probate to respondent.
5. On May 28, 2010, Callahan contacted respondent by fax inquiring about the closure of the probate. Respondent did not respond to Callahan’s fax.
6. On August 23, 2010, Callahan sent respondent her final accounting so that he could close the probate; and on September 6, 2010, Callahan sent respondent additional documents so that he could close the probate. Respondent ceased working on the probate between October 2010 and April 2013 approximately due to personal problems he was experiencing at the time.
7. In or about May 2013, respondent told Callahan that he would send her a final draft of the documents needed to close the estate for her signature. Respondent did not send any documents to Callahan to close the estate.

8. On June 18, 2013, Callahan sent a letter to respondent, via certified mail, in which she requested that respondent close the estate and that respondent contact her. Respondent did not close the estate or contact Callahan as requested.

9. In January 2014, Callahan submitted her State Bar complaint against respondent and on February 7, 2014, the State Bar of California ("State Bar") sent a letter to respondent regarding Callahan's complaint. On February 24, 2014, respondent faxed his response regarding Callahan's complaint to the State Bar.

10. As of March 28, 2014, respondent had not contacted Callahan to discuss closure of the estate. On March 28, 2014, after being contacted by the State Bar's investigator regarding Callahan's complaint, respondent emailed Callahan and apologized for his delay in finalizing the probate and offered to complete the probate for Callahan.

11. On April 3, 2014, respondent acknowledged to the State Bar's investigator during a telephone conversation that he had been in contact with Callahan recently and that she told him that she wanted him to finish the probate. Respondent told Callahan to provide updated information and then he would file the documents needed to finalize the probate.

12. In or about late April 2014, Callahan sent respondent a letter with the information regarding closing the probate.

13. On June 4, 13, and 25, 2014, Callahan called respondent for the status of the probate, but received no response from respondent.

14. On June 12, 2014, the State Bar sent a letter to respondent regarding Callahan's complaint and asked respondent to provide the status of the probate. Respondent did not respond to the State Bar's letter.

15. To date, respondent has not finalized the probate or closed the estate.

16. Respondent has agreed to forego any attorney fees to alleviate the financial harm caused to the estate by respondent's misconduct (including storage fees incurred for the decedent's personal belongings and property taxes paid for decedent's real property) and to finalize the probate for Callahan.

CONCLUSIONS OF LAW:

17. By not finalizing the probate after Callahan provided information to respondent in 2010 and after respondent subsequently informed Callahan that he would finalize the probate, respondent failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By not responding to Callahan's May 2010 fax, June 2013 letter and June 2014 calls, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

19. By not informing Callahan that respondent would not be working on the probate between October 2010 and April 2013 approximately, respondent failed to keep Callahan reasonably informed of

a significant development in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

Case No. 14-O-02766 (Complainant Sherry Van Dyk)

FACTS:

20. In or about December 2012, Sherry Van Dyk ("Van Dyk") employed respondent to perform legal services, namely to recover her furniture that was in the possession of her fiancé, Emile Beaucard Maghsadi, before he died in August 2012 and to pursue claims to her fiance's assets, including filing a creditor's claim on behalf of Van Dyk in the probate of his estate once the probate was initiated. Van Dyk advanced \$2,800 to respondent as fees.

21. Respondent performed legal services for Van Dyk by meeting with her, reviewing documents received from Van Dyk, conducting internet searches for the decedent's assets, having telephone contact with the decedent's brother and his attorney, and conducting research regarding the possibility of filing a claim against the estate or initiating a probate as a creditor.

22. Throughout 2013, Van Dyk called respondent periodically for the status of her case. Respondent did not provide the status to Van Dyk.

23. In January 2014, Van Dyk went to respondent's office to discuss the status of the case, as she had not heard from respondent about the matter. Respondent indicated that he would send a letter to the attorney for the estate yet to be identified and provide status updates.

24. After the January 2014 meeting, Van Dyk started calling respondent about two to three times per week. Van Dyk's calls were answered by respondent's voice mail and Van Dyk left messages for respondent to return her calls and her money. Van Dyk did not receive a return call or a refund from respondent.

25. On February 10, 2014, Van Dyk sent a certified letter to respondent in which she terminated respondent's employment and requested a refund of the \$2,800 advanced fee. Respondent did not provide any accounting or refund to Van Dyk.

26. In April 2014, Van Dyk submitted a complaint against respondent to the State Bar of California.

27. On May 27, 2014, the State Bar's investigator sent a letter to respondent requesting that he provide a written response to Van Dyk's complaint by June 10, 2014. Respondent did not provide his written response to the State Bar.

28. On June 17, 2014, the State Bar's investigator sent another letter to respondent requesting that he provide a written response to Van Dyk's complaint by July 1, 2014. Respondent did not provide his written response to the State Bar regarding Van Dyk's complaint until October 12, 2014, during a settlement conference held in connection with case no. 14-O-01379.

29. On December 5, 2014, Respondent provided an accounting for the \$2,800 to the State Bar demonstrating that \$1,722.50 had been earned by respondent and that a refund of \$1,077.50 was due to Van Dyk. To date, respondent has not returned \$1,077.50 to Van Dyk.

CONCLUSIONS OF LAW:

30. By not responding to Van Dyk's calls in 2013 and 2014, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

31. By not providing an accounting for the \$2,800 advanced fee to Van Dyk, respondent failed to account to a client for advanced fees upon termination of respondent's employment, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

32. By not providing a substantive written response to the State Bar's letters of May 27 and June 17, 2014 until October 12, 2014, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code, section 6068(i).

33. By not returning \$1,077.50 to Van Dyk, respondent failed to promptly refund any part of a fee paid in advance that had not been earned, in willful violation of the Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 14-O-03650 (Complainant: April Farael)

FACTS:

34. On May 7, 2013, April Farael ("Farael") employed respondent to probate her father's estate. On May 7, 2013, Farael paid respondent \$1,500 as advanced costs for the probate, which respondent did not deposit into his client trust account. On June 10, 2013, respondent filed a probate petition on behalf of Farael, *Estate of Vital Mory*, Los Angeles County Superior Court case no. BP142188. On June 13, 2013, respondent filed an ex parte application for letters of special administration seeking Farael's appointment as administrator which was granted. The court required that a \$31,000 bond be filed with the court before the court issued letters of special administration. The letters of special administration, if issued, were to expire on July 10, 2013. Respondent communicated the outcome of the ex parte hearing to Farael. Respondent did not file the bond.

35. On July 10, 2013, another hearing was held in the probate case. The letters of administration were granted, but the court did not approve a request in the petition to waive a bond. Farael was required to post a \$150,000 bond before the letters of administration could be issued. The court directed respondent to prepare a written order and set the deadline to file either a petition for final distribution or a status report on January 9, 2015 and set a hearing on an order to show cause regarding an accounting and/or the status of the distribution for February 6, 2015. Respondent did not submit a written order appointing Farael as the administrator for the estate and did not file any other document in the probate on behalf of Farael.

36. Between July 2013 and January 2014 approximately, Farael repeatedly called respondent and left messages asking for the status of the probate. During this time, Farael's sister also called and emailed respondent asking for the status of the probate on behalf of Farael. Respondent did not return all of Farael's calls or sufficiently communicate the status of the probate to Farael.

37. On January 9, 2014, Farael emailed respondent complaining that he had not responded to status inquiries by Farael and her family during the past few months and she had been unable to reach respondent by email or by telephone.

38. On January 10, 2014, Farael informed respondent in an email that she intended to complain against respondent to the State Bar of California if she did not hear from respondent. On January 11, 2014, respondent replied to Farael's email. Respondent apologized for the delay and stated to Farael that he had been ill and had problems with his computer. Respondent requested Farael's sister to sign a bonding company form, since Farael did not have sufficient assets to support a bond, which her sister signed and returned to respondent on January 15, 2014. Thereafter, Farael did not hear from respondent about the status of the probate.

39. On March 4, 2014, Farael emailed her request to respondent for the status of the probate. Respondent did not respond to Farael's inquiry.

40. On March 23, 2014, Farael sent a letter to respondent terminating his employment and requesting a refund of the \$1,500 in advanced costs so she could hire another attorney. Respondent did not provide an accounting to Farael or a refund of unused costs.

41. On December 3, 2014, respondent provided an accounting of the \$1,500 advanced costs to the State Bar. Prior to this date, respondent mistakenly believed that the actual expenses incurred in Farael's matter exceeded \$1,500, but determined that he had incurred \$635 in costs and a balance of \$865 was due to Farael.

42. To date, respondent has not returned the unused costs to Farael, but has agreed to return the unused costs to Farael by December 31, 2014.

CONCLUSIONS OF LAW:

43. By not filing a bond, by not submitting a written order appointing Farael as the administrator for the estate and by not filing any other document in the probate on behalf of Farael, respondent failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

44. By not responding to Farael's calls between July 2013 and January 2014 and March 4, 2014 email, respondent failed to respond to reasonable status inquiries of a client, in willful violation of Business and Professions Code, section 6068(m).

45. By not providing an accounting for the \$1,500 advanced costs received from Farael until December 3, 2014, respondent failed to account to a client for advanced fees upon termination of respondent's employment, in willful violation of the Rules of Professional Conduct, rule 4-100(B)(3).

46. By not returning \$865 in unused costs to Farael, respondent failed to pay promptly as requested by a client, any portion of the \$1,500 in advanced costs in respondent's possession, in willful violation of Rules of Professional Conduct, rule 4-100(B)(4).

47. By not depositing the \$1,500 advanced costs into a client trust account, respondent failed to deposit funds received for the benefit of the client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation Rules of Professional Conduct, rule

4-100(A).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)):

Respondent failed to perform and account in two client matters, failed to communicate in three client matters, failed to promptly return unused costs, failed to deposit advanced costs into a trust account, and failed to cooperate in one State Bar investigation.

Harm (1.5(f)):

Respondent's delay in finalizing the probate for Callahan led to the estate incurring expenses for storing the decedent's personal belongings and property taxes for decedent's real property.

Indifference (Std. 1.5(g)):

While respondent apologized to Callahan in March 2014 for respondent's delay in finalizing the probate, respondent demonstrated indifference by not finalizing the probate for Callahan after respondent repeatedly represented to Callahan that he would finalize the probate and after he apologized for not doing so. Respondent's indifference is tempered by his agreement to finalize the probate for Callahan and waiving any entitlement to attorney fees to alleviate any financial harm caused to the estate because of his misconduct. Respondent also demonstrated indifference to Farael by not taking action in her mother's probate after he apologized to Farael in January 2014 for his delay in the matter.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

No prior record of discipline.

Although respondent's misconduct is serious, he was admitted to the State Bar on December 21, 1983 and has no prior record of discipline in over 30 years of practice. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 225 [in excess of 30 years in practice without prior discipline considered an important mitigating factor].)

Family Problems:

Respondent was suffering from stress and anxiety caused by personal problems around the time of his misconduct for which he voluntarily consulted with a therapist and a psychiatrist in 2010 and 2011. Beginning in 2010, respondent, a solo practitioner, was absent from work for lengthy periods of time to take care of his wife due to her illness and his family. Respondent's personal problems led to financial losses and marital problems for which therapy was received on a weekly basis from May 2011 to September 2011. Respondent's wife filed for dissolution in September 2012. Around October 2012, respondent spent additional time away from his office to take care of his children. The dissolution was contested and a judgment was entered in December 2013, but certain issues remained unresolved. Respondent has to pay a significant portion of his income to his ex-wife which has negatively impacted his finances. Respondent had weekly therapy sessions from June 2011 to December 2013, but had to

stop the sessions for financial reasons. Respondent's current psychiatrist established a nexus between his mental health and personal problems and his misconduct. His psychiatrist confirmed that respondent developed symptoms of depression and anxiety that affected his functional level during the dissolution for which respondent received treatment beginning in October 2013 and that respondent has been compliant with his treatment. (*In re Naney* (1990) 51 Cal.3d 186, 197 [emotional problems resulting from marital problems and similar difficulties entitled to mitigation if extreme and directly responsible for misconduct]; *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 614, 619 [family problems suffered by attorney including marital dissolution given mitigation credit]; *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [mitigation given for difficulties/disabilities in the absence of complete rehabilitation finding that steady progress towards rehabilitation had been shown].)

Pretrial and prefiling Stipulation:

While respondent failed to cooperate in the State Bar's investigation of Van Dyk's complaint, case no. 14-O-02766, in case no. 14-O-01379, respondent has stipulated to facts and culpability prior to trial, and in case nos. 14-O-02766 and 14-O-03650, respondent has stipulated to facts and culpability prior to the filing of formal charges, and thereby saved State Bar resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

Good character:

Respondent has engaged in charitable activity. For the past 10 years, respondent has performed community service for the Temple Israel of Hollywood which hosts an annual Christmas dinner for 900 homeless and low income people. The people are fed and given blankets, clothing, toiletries and toys. Respondent donated his time and services in organizing the event. Respondent has acted as the chairperson of the event for five of the 10 years. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 and *Porter v. State Bar* (1990) 52 Cal.3d 518, 529 [civic service and charitable work as evidence of good character and mitigation].)

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 Silvertan* (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 12 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 sanctions applicable to respondent’s misconduct are found in Standards 2.2(a) and 2.5(b), which apply to respondent’s violations of Rules of Professional Conduct, rule 4-100(B)(4), and rule 3-110(A) and Business and Professions Code section 6068(i), respectively.

Standard 2.2(a) provides that an actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds. Standard 2.5(b) provides that actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.

Respondent’s misconduct occurred at a time when he was experiencing family and marital problems and was out of character given respondent’s decades in practice without prior discipline, which is a significant mitigating factor. Respondent voluntarily sought counseling to deal with his stress and anxiety caused by his personal problems and has entered into stipulations to save State Bar resources. Yet respondent failed to rectify his misconduct by taking steps to finalize the estate for Callahan, but is preparing to do so and is foregoing his attorney fees in light of the financial harm caused to the decedent’s estate. His failure to deposit Farael’s advanced costs in his trust account and failure to promptly pay out the unused portion of the costs to Farael was not venal or dishonest.

A 90-day actual suspension, a one-year stayed suspension and a two-year probation with educational requirements of State Bar Ethics School and the Multistate Professional Responsibility Examination coupled with the formulation of a law office management plan will serve to protect the public and remind respondent of his ethical obligations. This recommendation is consistent with the applicable standards and Supreme Court case law. (*Matthew v. State Bar* (1989) 49 Cal.3d 784 [60-day suspension for failure to perform competently, communicate and return unearned fee involving three clients; aggravated by financial harm and mitigated by no priors in three years of practice]; *King v. State Bar* (1990) 52 Cal.3d 307 [90-day suspension for failure to perform competently, failure to return files, and misrepresentation involving two client matters, aggravated by financial and emotional client harm and failure to pay restitution, and mitigated by no prior discipline in 17 years of practice, financial problems and depression].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 1, 2014, the prosecution costs in this matter are \$13,236. Respondent further acknowledges

that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational courses to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case number(s): 14-O-01379, 14-O-02766. and 14-O-03650
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SIGNATURE OF THE PARTIES

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

<u>12/8/14</u>	<u>Kenneth E. Ostrove</u>	<u>Kenneth E. Ostrove</u>
Date	Respondent's Signature	Print Name
<u> </u>	<u> </u>	<u> </u>
Date	Respondent's Counsel Signature	Print Name
<u>12/8/14</u>	<u>Diane J. Meyers</u>	<u>Diane J. Meyers</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Kenneth Edward Ostrove	Case Number(s): 14-O-01379, 14-O-02766. and 14-O-03650
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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.

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

Date 12-22-14



GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on December 23, 2014, I deposited a true copy of the following document(s):

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

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

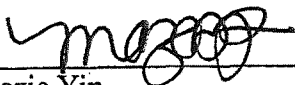
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KENNETH EDWARD OSTROVE
LAW OFC KENNETH E OSTROVE
5200 LANKERSHIM BLVD STE 850
NORTH HOLLYWOOD, CA 91601 - 3155

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

DIANE J. MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 23, 2014.



Mazie Yip
Case Administrator
State Bar Court

1 Kenneth E. Ostrove SBN: 111222
2 Law Offices of Kenneth E. Ostrove
3 5200 Lankershim Boulevard, Suite 850
4 North Hollywood, California 91601
5 Telephone (818) 505-1214
6 Fax (818) 505-9543

FILED

SEP 15 2014

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Filed per judge's order

7 Attorney for In Pro Per

8 **STATE BAR COURT**
9 **HEARING DEPARTMENT - LOS ANGELES**

10 In the Matter of:

Case No. 14-O-01379

11

RESPONSE TO NOTICE OF
DISCIPLINARY CHARGES

12

13 KENNETH EDWARD OSTROVE
14 No. 111222,

kwilt...

15

16 A Member of the State Bar

17 Respondent, Kenneth E. Ostrove, responds to the notice of disciplinary charges filed
18 herein as follows:

19 1. The address to which all further notices to respondent in relation to these proceedings
20 may be sent is as follows:

21 5650 St. Clair Avenue, North Hollywood, California 91607

22 2. Respondent specifically denies each of the allegations and charges contained in the
23 notice of disciplinary charges.

24 **EXTENUATING AND MITIGATING CIRCUMSTANCES**

25 In the event respondent is found culpable of unprofessional conduct as charged in the
26 notice of disciplinary charges, respondent respectfully submits the following facts in mitigation
27
28

1 without admitting that such charges are true or that the facts alleged therein constitute
2 professional misconduct:

3 1. Respondent has practiced law in the State of California for thirty years without any
4 prior charges of misconduct or prior disciplinary record. Throughout his professional career,
5 respondent has successfully endeavored to maintain a high level of respect and an excellent
6 reputation among his fellow attorneys and the courts for honesty, integrity, and professional
7 competence in diligently and vigorously representing his clients.
8

9 2. During the period in which the charged acts of misconduct allegedly occurred, and
10 prior to that time, respondent was experiencing serious domestic difficulties and turmoil due to
11 personal, financial and marriage issues, which culminated in dissolution of his marriage filed in
12 2012. Because of such difficulties, respondent, a sole practitioner, was less able to be physically
13 in his office to perform work, which also affected him mentally and emotionally to be able to
14 devote the degree of attention and service to his professional duties that his practice required. As
15 a consequence, the incident complained of occurred. Respondent has consulted with a therapist
16 and psychiatrist to help him through these difficulties, which has helped. However, as a result of
17 the dissolution, in which Respondent has custody of his children (two daughters, ages 13 and 15)
18 fifty percent of the time, it has proven extremely challenging to take care of them, including all
19 of the driving to and from school and all other events, keep up the home, pay all the bill, all
20 while continuing to run a solo law practice.
21
22

23 3. Over the past few years, Respondent has been doing his best to cope with the
24 following events and circumstances, some occurring close in time to one another and others at
25 the same time:
26
27
28

1 In 2010, Respondent's wife became very ill, requiring hospitalization. She got well over
2 time, and it was not specifically determined what was wrong with her. Respondent had to take
3 time from work to help care for her at home, and take care of our two daughters, ages 10 and 12
4 at that time. Being a sole practitioner, Respondent did not have an associate to cover for him
5 when he was out of the office.
6

7 Just as Respondent's wife was getting back to full health, she was in a car accident, with
8 Respondent younger daughter in the car. Fortunately, they were not seriously injured, but it had
9 to be attended to, including replacing the totaled vehicle and other matters to take care of.
10

11 At that same time, we were starting a major remodel of our home, which over the next
12 year turned into a proverbial nightmare of major problems with the contractor, architect, and the
13 construction. We had to fire the first contractor, and hire another one to take over the job. The
14 amount of money spent and wasted was a tremendous blow to us financially, as well as having to
15 deal with the stress and anxiety of all of the problems.
16

17 Respondent still had to attend to business and his family, and it was extremely
18 challenging and stressful, to say the least. After firing the architect, Respondent became the
19 manager of the project, and would have to go home after work, look over things in the dark, and
20 figure out what had to be fixed, re-done, and what was left to do. We moved out for several
21 months, incurring both rental payments and mortgage payments. The project took a year, when
22 it was estimated to take eight months. It was a particularly rainy season, and Respondent spent
23 many evenings and weekends putting plastic tarps over the exposed construction, which did not
24 end up preventing rooms and material from getting soaked.
25

26 The construction ended in April of 2011. Later that year, and into the next year,
27 Respondent and his wife started to have some serious marital issues, which eventually lead to her
28

1 filing for divorce in 2012. It started out fairly friendly, but eventually became contested over
2 certain issues. The final judgment was entered in December 2013, but there are still some
3 lingering issues now. A significant portion of Respondent's income is payable to his ex-wife,
4 which has a serious impact on his finances.

5 We have split custody of the children, pretty much 50/50. Right from the moment
6 Respondent's wife moved out in October of 2012, Respondent was responsible to get his
7 children to and from school and all of their appointments and activities, take care of the house,
8 pay the bills, and find time to attend to Respondent work. It has been daunting, challenging, and
9 emotional adapting to all of this after a 17 year marriage.
10

11 The routines change appreciably for school months and summer months. This summer,
12 one of Respondent's children was in summer school and the other was not, which made it
13 actually more hectic than during the school year, and Respondent was spending even less time at
14 work.
15

16 Financial responsibilities are always present and continue to grow. Earlier this year,
17 there was a major plumbing leak in the house, resulting in damages to an upstairs bathroom and
18 downstairs bedroom, and is not entirely covered by insurance. Respondent's younger daughter is
19 need of orthodontic braces. There are still unfinished items on the house, which were not
20 completed when it was remodeled.
21

22 Respondent's office assistant recently graduated from College and went onto a different
23 job. Respondent is presently without an assistant and has not had time to look into getting a
24 replacement.
25
26
27
28

1 Respondent has consulted with a Therapist and Psychiatrist to help him cope with these
2 changes and deal with them as best Respondent can. Respondent's Psychiatrist recently changed
3 his medication to help improve his ability to handle work and all the other responsibilities.

4 Respondent has been an active member of his Temple for many years. Respondent is the
5 chairperson each December for a Christmas Dinner we serve to about 400 homeless men and 500
6 low income families at the Hollywood United Methodist Church. Respondent am in charge of
7 coordinating that event, in which they serve a full Christmas dinner, hand out blankets, gloves,
8 hats and toiletries to the homeless men, toiletries to the families, toys to the kids, have live music
9 and have a photo area, where everyone can get a picture with Santa.

10
11 Respondent is also on the Board of Trustees of the Temple and has endeavored to keep
12 involved to help with the positive social action work which the Temple does.

13
14 Notwithstanding all of this, Respondent has optimism for the future. Respondent has
15 been learning to cope with and handle this better and better as time goes by. A good deal of the
16 major divorce issues are now behind him and Respondent is better able to attend to the many
17 duties and responsibilities Respondent has. Respondent has ups and downs and set-backs, but
18 there has been improvement.

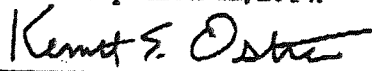
19
20 At this age and stage of his career, Respondent never expected to be in this situation. It
21 remains daunting and challenging to take care of his two teen-age daughters, home, and business,
22 but Respondent is confident that Respondent can do it, including finishing up Ms. Callahan's
23 case, if his is allowed to do so.

24
25 Respondent did not advise Ms. Callahan of Respondent personal difficulties and
26 problems, partly because they are not her concern regarding his representation of her, and partly

1 because Respondent was embarrassed to say he was having such difficulties that affected him
2 both personally and in his work.

3 WHEREFORE, respondent prays that the Hearing Panel find that the act(s) charged did
4 not constitute professional misconduct or, if misconduct is found, that it be excused by virtue of
5 the mitigating circumstances submitted.
6

7 Dated: September 12, 2014.

8 
9 Kenneth E. Ostrove, Respondent, In Pro Per

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PROOF OF SERVICE BY FAX

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence address is: 5650 St. Clair Avenue, North Hollywood, CA 91607

The Fax number from which I served the documents is (818) 508-4289

On September 13, 2014, I served the following document: Response to Notice of Disciplinary Charges.

I served the documents on the person or persons below, as follows:

a. Name of person served: Diane J. Meyers

b.

c.

(1) Fax number where person was served: (213) 765-1442

(2) Time of service: 6:36 PM

3. I faxed the documents to the persons at the fax number listed in Item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 13, 2014

Kenneth E. Ostrove

Kenneth E. Ostrove

HP Officejet 6500 E710n-z All-in-One series

Fax Log for
Ostrove
(818) 508-4289
Sep 13 2014 6:40PM

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
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Sep 13	6:36PM	Fax Sent	12137651442	3:44 N/A	8	OK

HP Officejet 6500 E710n-z All-In-One series

Fax Log for
Ostrove
(818) 508-4289
Sep 13 2014 6:47PM

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
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Sep 13	6:42PM	Fax Sent	12137651568	4:39 N/A	10	OK

PUBLIC MATTER

FILED

AUG 06 2014

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

1 STATE BAR OF CALIFORNIA
2 OFFICE OF THE CHIEF TRIAL COUNSEL
3 JAYNE KIM, No. 174614
4 CHIEF TRIAL COUNSEL
5 JOSEPH R. CARLUCCI, No. 172309
6 DEPUTY CHIEF TRIAL COUNSEL
7 MELANIE J. LAWRENCE, No. 230102
8 ASSISTANT CHIEF TRIAL COUNSEL
9 DIANE J. MEYERS, No. 146643
10 DEPUTY TRIAL COUNSEL
11 845 South Figueroa Street
12 Los Angeles, California 90017-2515
13 Telephone: (213) 765-1496

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of:) Case No. 14-O-01379
14 KENNETH EDWARD OSTROVE,) NOTICE OF DISCIPLINARY CHARGES
15 No. 111222,)
16 A Member of the State Bar)

NOTICE - FAILURE TO RESPOND!

18 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
19 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
20 **THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
23 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 24 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
25 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
26 **AND THE DEFAULT IS SET ASIDE, AND;**
- 27 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
28 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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The State Bar of California alleges:

JURISDICTION

1. Kenneth Edward Ostrove (“respondent”) was admitted to the practice of law in the State of California on December 21, 1983, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 14-O-01379
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. On or about August 28, 2007, Deborah Callahan employed respondent to perform legal services, namely to probate the Estate of Nolan Callahan, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by not finalizing the probate after the following:

- A) filing letters of administration for Deborah Callahan in the Los Angeles County Superior Court, case no. BP106384, on August 28, 2007, obtaining an order appointing Deborah Callahan as the administrator of the estate on October 10, 2007, and filing a status report regarding the administration of the estate on December 16, 2008;
- B) information was provided by Deborah Callahan to respondent in January, March, August and September 2010 to finalize the probate;
- C) respondent informed Deborah Callahan in May 2013 that he would send her a draft of the documents needed to finalize the probate for her signature, but did not send the draft to Deborah Callahan;
- D) Deborah Callahan requested on June 18, 2013 that respondent finalize the probate; and
- E) respondent informed Deborah Callahan in April 2014 that he would finalize the probate.

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COUNT TWO

Case No. 14-O-01379
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

3. Respondent failed to respond promptly to two written and three telephonic reasonable status inquiries made by respondent's client, Deborah Callahan, in May 2010, June 2013 and June 2014 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

COUNT THREE

Case No. 14-O-01379
Business and Professions Code, section 6068(m)
[Failure to Inform Client of Significant Development]

4. Respondent failed to keep respondent's client, Deborah Callahan, reasonably informed of a significant development in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m), by failing to inform the client that respondent would not be working on the client's probate matter between October 2010 and April 2013 approximately.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

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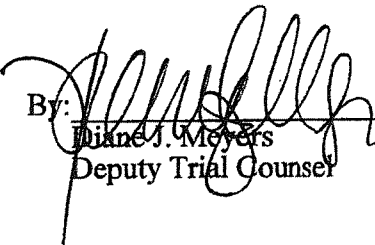
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Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED:

8/6/14

By: 

Diane J. Meyers
Deputy Trial Counsel

DECLARATION OF SERVICE

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

CASE NUMBER(s): 14-O-01379

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

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

NOTICE OF DISCIPLINARY CHARGES

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

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7196 9008 9111 1006 8821 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:
Row 1: KENNETH EDWARD OSTROVE, Law Ofc Kenneth E. Ostrove 5200 Lankersheim Blvd., Ste. 850 North Hollywood, CA 91601-3155, Electronic Address, (empty)

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). 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, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

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

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

DATED: August 6, 2014

SIGNED: Sandra Reynolds
Declarant



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 August 30, 2016

State Bar Court, State Bar of California,
Los Angeles

By
Clerk

(State Bar Court No. 15-PM-15232)

S224490

IN THE SUPREME COURT OF CALIFORNIA SUPREME COURT

FILED

En Banc

JUN 21 2016

In re KENNETH EDWARD OSTROVE on Discipline Frank A. McGuire Clerk

Deputy

The court orders that the probation of Kenneth Edward Ostrove, State Bar Number 111222, is revoked. The court further orders that Kenneth Edward Ostrove is suspended from the practice of law for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Kenneth Edward Ostrove is suspended from the practice of law for a minimum of the first 120 days of his probation.
2. Kenneth Edward Ostrove must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order filed on March 30, 2016.
3. At the expiration of the period of probation, if Kenneth Edward Ostrove has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Kenneth Edward Ostrove must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-half of the costs must be paid with his membership fees for each of the years 2017 and 2018. If Kenneth Edward Ostrove fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

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

Witness my hand and the seal of the Court this

day of JUN 21 2016 20

By: [Signature] Deputy

CANTIL-SAKAUYE

Chief Justice

kwiktag

211 088 793

FILED

MAR 30 2016

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 15-PM-15232-YDR
)	
KENNETH EDWARD OSTROVE,)	AMENDED ORDER RE
)	MOTION TO REVOKE PROBATION
Member No. 111222,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction

In this probation revocation proceeding, Kenneth Edward Ostrove ("Respondent"), is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California ("Office of Probation") seeks to revoke his probation, to impose upon Respondent the entire period of suspension previously stayed, that Respondent remain suspended until he makes restitution, and to involuntarily enroll Respondent as an inactive member of the State Bar.

Respondent opposes the motion, arguing that he has tried to comply with his probation conditions, which he takes "very seriously." Respondent did not offer a discipline recommendation.

Respondent has paid full restitution. However, the court finds, by preponderance of the evidence, that Respondent has violated his probation conditions and hereby grants the motion in part and denies it in part. The court recommends, among other things, that Respondent's probation be revoked, that the previously stayed, one-year suspension be lifted, that he be suspended for one year, that execution of the suspension be stayed, that he be placed on probation for two years on conditions and that Respondent be actually suspended for 120 days.

Significant Procedural History

On October 29, 2015, the Office of Probation filed and properly served on Respondent a motion to revoke probation. Respondent, representing himself, filed a response on November 19, 2015. On January 25, 2016, Respondent filed a supplement to his probation revocation response. Respondent filed a second supplement to his probation response on February 4, 2016. The court took this matter under submission on February 23, 2016, after a hearing.

The first Order Re Motion to Revoke Probation was filed March 23, 2016. This Amended Order Re Motion to Revoke Probation addresses California Rules of Court, rule 9.20 and was filed March 30, 2016.

Findings of Fact and Conclusions of Law

The following findings of fact are based on declarations, testimony and documentary evidence submitted at the hearing.

Respondent was admitted to the practice of law in California on December 21, 1983 and has been a member of the State Bar of California at all times since that date.

Probation Conditions in Supreme Court Case No. S224490

On April 28, 2015, in Supreme Court Case No. S224490, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be placed on probation for two years, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed December 23, 2014 (State Bar Court case No. 14-O-01379); and
2. Respondent comply with certain probation conditions, including:
 - a. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the probation period;

b. Within 30 days of the effective date his discipline, develop a law office management/organization plan ("LOMP"), which must be approved by the Office of Probation. The LOMP must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding;

c. Pay restitution to the following payees: Sherry Van Dyk in the amount of \$1,077.50 plus 10 percent interest per year from February 10, 2014, and April Farael in the amount of \$865 plus 10 per cent interest per year from March 23, 2014. Respondent must pay the restitution and provide satisfactory proof of payment to the Office of Probation no later than 30 days after the effective date of the discipline as to Sherry Van Dyk. As for April Farael, if restitution of \$865 is not paid by December 31, 2014, then Respondent must pay restitution to Farael, and provide satisfactory proof of payment to the Office of Probation not later than 30 days after the effective date of discipline; and

d. Obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at Respondent's own expense a minimum of one time per month and furnish evidence to the Office of Probation that he is complying with each quarterly report. The treatment should commence no later than 30 days after the effective date of the discipline. Treatment must continue for the period of probation or until a motion to modify this condition is granted and the ruling becomes final.

Notice of this order was properly served on Respondent in the manner prescribed by California Rules of Court, rule 8.532(a), at Respondent's official address in accordance with Business and Professions Code section 6002.1. The effective date of the Supreme Court order was May 28, 2015.

Probation Violations and Respondent's Contentions

Quarterly Report

The Office of Probation alleges Respondent's July 10 quarterly report was untimely. On May 19, 2015, May Ling Fernandez of the Office of Probation sent a letter to Respondent outlining the terms and conditions of his probation. Respondent received the letter.

Respondent's first quarterly report was due July 10, 2015. He filed the report on July 20, 2015, 10 days late.

In his declaration in response to the motion to revoke his probation, Respondent stated that he was working to complete his July 10, 2015 quarterly report on time, but on June 26 his daughter was transported to the hospital by ambulance due to a horse riding accident.

LOMP

Respondent had to submit his LOMP to the Office of Probation by June 27, 2015. On June 15, 2015, Respondent notified the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") and Office of Probation that he was having difficulty complying with his probation conditions. The State Bar advised Respondent that he could make a motion to modify his conditions. On June 23, Respondent sought assistance with filing the requisite motion from the State Bar, wherein the State Bar directed Respondent to the State Bar Rules of Procedure. After reviewing the rules, Respondent discovered his probation requirements could be modified by stipulation. On June 24, Respondent asked the State Bar to stipulate to extending the time for

him to pay restitution, submit his LOMP and comply with rule 9.20. The Office of Probation responded to Respondent's request on June 25, 2015, declining to enter into a stipulation.

Respondent submitted his LOMP on July 21, 2015, almost one month late. Thereafter, Respondent submitted revised LOMPs on July 21, July 31, August 18, and September 3, 2015. After each submission, the Office of Probation mailed Respondent a letter rejecting the LOMP for various reasons. As of the date of the hearing in this matter, Respondent has not submitted a LOMP that has been approved by the Office of Probation.

Respondent declared that he was working to complete the LOMP by the June 27, 2015 deadline. During the time period he was trying to complete the plan, Respondent was moving his office into his home. The move was difficult because he had to transport furnishings, equipment, supplies and 10 years of files to his home. In addition, each time the Office Probation notified him about the deficiencies in his LOMP, he made additions and corrections. With respect to the final defect in the LOMP, he does not understand what additional information is required.¹

Each time his plan was rejected, Respondent attempted to address the specified deficiencies. After Respondent's September 3, 2015 LOMP was rejected, the Office of Probation repeated the same exact reason it rejected the prior LOMP. A review of Respondent's September 3, 2015 LOMP indicates that he provided a relatively detailed procedure for withdrawing as counsel if the client could not be found. If the Office of Probation was not satisfied with his procedure, it should have provided further explanation regarding the procedure's deficiency. Providing the same exact explanation for rejecting the LOMP failed to provide Respondent with any real indication as to why his procedure was inadequate.

¹ The September 3, 2015 LOMP was rejected because Respondent failed to set forth Respondent's procedure to withdraw as attorney, whether of record or not when clients cannot be contacted or located.

Even though the Office of Probation should have specified why Respondent's latest LOMP was insufficient, Respondent is not excused from submitting a timely LOMP. Respondent had until June 27, 2015 to file his LOMP, but he did not file his first plan until July 21, 2015.

Restitution

The Office of Probation's May 19, 2015 letter included a "Proof of Payment Information" document. The document indicated that there are two payment methods of proof accepted by the Office of Probation – a copy of the front and back of the negotiated check or an original declaration signed by the payee specifying the amount received, date received, and current contact information for the payee.

Respondent had until June 27, 2015, to pay restitution to Sherry Van Dyk and April Farael. Since the Office of Probation declined his request to extend the time to pay restitution, on June 25, 2015, Respondent paid Farael \$865. On June 27, 2015, he paid her \$110 in interest. Respondent made both payments via PayPal. Respondent did not provide the Office of Probation with an acceptable form of proof of payment. On November 24, 2015, the Office of Probation received confirmation from Farael that she received the \$865 payment on June 25, 2015. On December 17, 2015, Farael confirmed with the Office of Probation that she received the \$110 interest payment on June 27, 2015.

Respondent did not pay restitution to Van Dyk until November 20, 2015. The State Bar received acceptable proof that Van Dyk received payment on December 5, 2015.

Respondent declared that he attempted to obtain the proper proof of payment from Farael, but she would not sign a document acknowledging receipt of the funds. With respect to Van Dyk, financial pressures led to his failure to timely pay her. Respondent declared and testified that he was trying to accumulate the funds to pay Van Dyk, but his daughter suffered the riding

accident on June 26, 2015. The out-of-pocket costs for this emergency was \$2,644 and he was required to pay one half of the bill.

Psychiatric Treatment

On July 9, 2015, Respondent provided a Mental Health Report from George Kappaz, L.C.S.W. verifying that Respondent received psychological treatment on June 19, 2015, and complied with all of the treatment recommendations. In his October 10, 2015 quarterly report, Respondent stated that he had another therapy session in July 2015, but Mr. Kappaz would not sign the Mental Health Report because Respondent failed to meet with him in August and September. Respondent also reported that he had a session with his psychiatrist in August regarding Respondent's medications, but Respondent could not afford to pay for one of those medications.

Respondent's declaration in response to the motion to revoke his probation states that Respondent is unable to pay his social worker for therapy or pay for one of the prescriptions prescribed by his psychiatrist.

Conclusions of Law

Business and Professions Code section 6093², subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence. Bad faith or evil intent is not required to find culpability. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) Rather, a general willingness to commit an act or permit an omission is sufficient. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Moreover, to determine whether a probation violation has occurred, there is no distinction between "substantial" and

² All references to sections are to the Business and Professions Code.

“insubstantial” or “technical” violations. (*In the Matter of Potack, supra*, 1 Cal State Bar Ct. Rptr. at 537.)

Respondent violated the terms of his probation by failing to: 1) submit a quarterly report by July 10, 2015 (it was 10 days late); 2) submit a LOMP by June 27, 2015 (it was 23 days late); 3) provide adequate proof that he paid \$865 plus interest in restitution to Farael and pay \$1,077.50 plus interest in restitution to Van Dyk by June 27, 2015; and 4) obtain psychiatric or psychological treatment in September 2015.

Therefore, by a preponderance of the evidence, Respondent willfully violated the probation conditions ordered by the Supreme Court in its April 28, 2015 order. As a result, the revocation of Respondent’s probation in California Supreme Court case No. S224490 is warranted.

Aggravation³

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

Prior Record (Std. 1.5(a))

In the underlying matter, effective May 28, 2015, the Supreme Court suspended Respondent for one year, stayed, and placed him on probation for two years with an actual suspension of 90 days for professional misconduct in three client matters. Respondent stipulated that he failed to: 1) perform with competence (two counts); 2) communicate (four counts); 3) render appropriate accounts (two counts); 4) cooperate in a disciplinary proceeding; 5) return unearned fees; 6) promptly disburse client funds; and 7) deposit entrusted funds into a client trust

³ All references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

account. Respondent's misconduct was aggravated by multiple acts of wrongdoing, client harm, and indifference but tempered by his lack of a prior discipline record, family problems, cooperation and good character.

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct involved multiple acts of wrongdoing. He failed to comply with four probation conditions. This factor is given minimal weight based on the nature and extent of the violations.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

Restitution and Psychiatric/Psychological Treatment

Respondent is entitled to some mitigation for belatedly completing his restitution requirement. (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 572 ["some" mitigation for sincere "steps to make restitution and comply with probation"]; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 652 ["belated compliance with a probation condition may be considered as a mitigating factor in determining discipline"].) Notably, Respondent timely paid full restitution to Farael and completed restitution to Van Dyk, albeit five months late. (See *In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 310-311 [restitution is important indicator of attorney rehabilitation].)

The court affords mitigating credit for Respondent's efforts to obtain psychiatric/psychological treatment. (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150 [Respondent's efforts to obtain therapy constitutes a significant mitigating circumstance].) Although Respondent declared in his October 2015 quarterly report that with the exception of September 2015, he met with either Mr. Kappaz or his psychiatrist, the

court limits the amount of mitigating credit because Respondent failed to provide any other evidence to support his declaration.

No Other Mitigating Circumstances

Respondent's financial problems are not a mitigating factor. Financial distress may be considered mitigating if it is extreme and results from circumstances that are not reasonably foreseeable or that are beyond the attorney's control. (*In re Naney* (1990) 51 Cal.3d 186, 196-197.) Respondent has failed to support his financial hardship by clear and convincing evidence; thus, the court does not consider it in mitigation.

The court rejects Respondent's contention that the Office of Probation's failure to advise him that his probation conditions could be modified by stipulation was misleading and a mitigating circumstance. The Office of Probation's May 19, 2015 letter stated that requests for extensions of time or modification of probation conditions had to be filed with the State Bar Court. The letter also stated that the relevant Rules of Procedure of the State Bar, provided that conditions could be modified by stipulation (rule 5.301). On June 15, 2015, the State Bar also provided the relevant Rules of Procedure of the State Bar about filing a motion to modify probation conditions, which included rule 5.301. The record reveals that Respondent did not read the Rules of Procedure until June 23, four days before he had to comply with paying restitution and submit his LOMP. He requested a stipulation on June 24, which the Office of Probation declined one day later. Under the circumstances, the court rejects Respondent's argument that the State Bar misled him and afford him no mitigation credit.

Finally, the court declines to assign any mitigation for Respondent's daughter's riding accident or his office move. First, even though his daughter suffered an accident on June 26 and Respondent states he had to care for her for the entire weekend, he fails to explain how that affected his ability to provide his report by July 10. Moreover, Respondent decided to move his

office in “early 2015” because the rent might increase. Once Respondent realized that his office would delay his ability to complete the LOMP, he should have filed a motion to extend the time to submit it. Respondent failed to do so.

Overall, the aggravation slightly outweighs the mitigation.

Discussion

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) “[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of that amount as an actual suspension.” (*In the Matter of Gorman, supra*, 4 Cal. State Bar Ct. Rptr. at p. 573.)

The Office of Probation contends that Respondent’s probation should be revoked because his failure to comply with his probation conditions demonstrates a lack of concern about his professional responsibilities and that the full amount of stayed suspension of one year should be imposed.

Respondent, on the other hand, argues that he was in constant communication with the Office of Probation about his inability to comply with all of his probation conditions, and he has demonstrated an effort to comply with the probation requirements. This indicates that he takes probation “very seriously” rather than exhibiting a lack of concern.

In determining the level of discipline to be imposed, the court must consider the “total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent

of the discipline is dependent, in part, on the nature of the probation violation and its relationship to Respondent's prior misconduct. (*Ibid.*)

Here, Respondent stipulated that his prior misconduct occurred while he was suffering from anxiety and depression due to family problems. Respondent's failure to comply with the psychological treatment condition breached the condition directly linked to his misconduct in the underlying matter. Respondent also failed to timely pay restitution, which was directly related to his failure to promptly disburse client funds. But as noted above, Respondent has paid restitution in full.

In addition to considering the nature of Respondent's probation violations, the court takes into account standard 1.8(a) since Respondent has a prior discipline record.⁴ Neither of the exceptions outlined in the standard apply, and there is no other reason presented in this case to depart from the progressive discipline recommended.

The court also finds guidance from two cases to determine the appropriate level of discipline – *In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. 302 and *In the Matter of Broderick, supra*, 3 Cal. State Bar Ct. Rptr. 138.

In *Taggart, supra*, the attorney was suspended for six months. He was required to pay \$1,528 plus interest in restitution, but failed to make any payments over a three-year period. Four days before the Supreme Court's disciplinary order became effective, Taggart filed a chapter 7 bankruptcy petition and sought to have the restitution obligation discharged. There were no mitigating circumstances. Respondent's two prior discipline records constituted an aggravating circumstance.

⁴ Under standard 1.8(a), if "a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

In *Broderick, supra*, the attorney was suspended for one year after he failed to pay at least nine of the monthly \$100 restitution payments to his clients and filed no quarterly reports. Multiple acts of wrongdoing and Respondent's failure to obtain required psychological testing, which was uncharged misconduct, were aggravating circumstances. Respondent's attempt to make two or three \$100 restitution payments, his efforts to obtain therapy from a biblical clinical counselor, and his candor and cooperation with the State Bar were deemed mitigating.

Here, Respondent's misconduct is much less serious than the misconduct in *Taggart* or *Broderick*. Respondent did not completely abandon his probation responsibilities since he did file his quarterly report and LOMP, albeit late; he did not repeatedly violate the same probation condition; paid full restitution; and did not have two prior records of discipline. Although, Respondent's overall misconduct is less serious than in *Taggart* and *Broderick*, the court must take into account that Respondent failed to comply with his psychological treatment probation condition. He has asserted financial hardship, but did not seek a modification of this condition

Nevertheless, the court does not believe that imposing the entire period of stayed suspension is necessary to achieve the goals of attorney disciplinary probation. The Office of Probation's recommendation that Respondent's probation be revoked without further conditions is inadequate to impress upon him the importance of strict compliance with probation conditions as an integral step toward rehabilitation. Moreover, a one-year actual suspension, which is the entire original period of stayed suspension, is excessive.

Therefore, the court finds good cause for granting the Office of Probation's motion to revoke Respondent's probation and concludes that part of the period of the stayed suspension be imposed. Balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the court finds that a 120-day actual suspension with a two-year probation would be sufficient to achieve the goals of attorney disciplinary probation.

The Office of Probation further recommends that Respondent be placed on involuntary inactive status under section 6007, subdivision (d), for failing to comply with the terms of his disciplinary probation. However, it is possible that if Respondent was placed on involuntary inactive status, by the time the Supreme Court order imposing discipline in this matter became effective, Respondent would have been precluded from practicing law for a longer period than the recommended discipline. Therefore, based on the shortened period of actual suspension recommended, the court denies the State Bar's request to enroll Respondent involuntarily inactive under section 6007, subdivision (d).

It is not recommended that Respondent be ordered to complete State Bar Ethics School because he was previously ordered to do so in Supreme Court Case No. S224490.

Recommendations

The court recommends that the probation of Respondent, **Kenneth Edward Ostrove**, previously ordered in Supreme Court Case No. S224490 (State Bar Court case No. 14-O-01379) be revoked, that the stay of the execution of the one-year suspension be lifted, that Respondent be suspended from the practice of law in California for one year, that execution of the suspension be stayed, and that Respondent be placed on probation for two years on the following conditions:

1. Respondent Kenneth Edward Ostrove is suspended from the practice of law for the first 120 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the

Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
7. Within 30 days after the effective date of the discipline herein, Respondent must resubmit the law office management plan ("LOMP") he submitted to the Office of probation on September 3, 2015. The Office of Probation has deemed the September 3, 2015, sufficient with the exception of Respondent's procedure for withdrawing as attorney when he is not the attorney of record and he cannot find the client. If the Office of Probation maintains that Respondent's withdrawal procedure is deficient, the Office of Probation must specify why Respondent's procedure is lacking.⁵
8. Respondent must obtain psychiatric or psychological treatment from a duly licensed psychiatrist, psychologist or clinical social worker, at Respondent's own expense, a minimum of one time(s) per month and must furnish satisfactory evidence of compliance to the Office of Probation with each quarterly report. Treatment should commence immediately and, in any event, no later than 30 days after the effective date of the Supreme Court's final disciplinary order in this proceeding. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final. If the treating psychiatrist, psychologist or clinical social worker determines that there has been a substantial change in Respondent's condition, Respondent or the State Bar may file a motion for modification of this condition with the State Bar Court Hearing Department pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

⁵ The court seeks clarification regarding the insufficiency of Respondent's procedure for withdrawing as attorney when he is not the attorney of record and he cannot find the client, which is outlined in Respondent's September 3, 2015 LOMP.

9. At the Office of Probation's request, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.
10. At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination ("MPRE") because he was previously ordered to do so in Supreme Court case No. S224490.

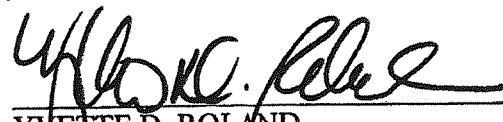
California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to 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 in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that 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. Fifty percent of the costs must be paid with Respondent's membership fees for each of the years 2017 and 2018. If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

Dated: March 30, 2016



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 30, 2016, I deposited a true copy of the following document(s):

AMENDED ORDER RE MOTION TO REVOKE PROBATION

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

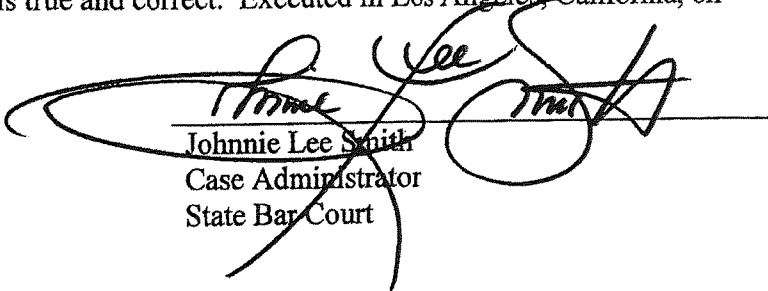
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KENNETH EDWARD OSTROVE
5650 SAINT CLAIR AVE
NORTH HOLLYWOOD, CA 91607**

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

TERRIE GOLDADE, PROBATION DEPT, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 30, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court

(State Bar Court No. 15-O-10800)

S237880

IN THE SUPREME COURT OF CALIFORNIA

En Banc

**SUPREME COURT
FILED**

DEC 20 2016

In re KENNETH EDWARD OSTROVE on Discipline

Jorge Navarrete Clerk

The court orders that Kenneth Edward Ostrove, State Bar Number 111222, ^{Deputy} is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for two years subject to the following conditions:

1. Kenneth Edward Ostrove is suspended from the practice of law for the first 30 days of probation;
2. Kenneth Edward Ostrove must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on August 23, 2016; and
3. At the expiration of the period of probation, if Kenneth Edward Ostrove has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

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

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

Witness my hand and the seal of the Court this

_____ day of DEC 20 2016

Month

By: 
Deputy

CANTIL-SAKAUYE

Chief Justice

kwiktag®

211 097 168

PUBLIC MATTER

FILED

AUG 23 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 15-O-10800-YDR
)	
KENNETH EDWARD OSTROVE,)	DECISION
)	
Member No. 111222,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

Kenneth Edward Ostrove (Respondent) is charged with four counts of misconduct in one client matter. The Office of Chief Trial Counsel of the State Bar of California (State Bar) has the burden of proving these charges by clear and convincing evidence.² This court finds that there is clear and convincing evidence demonstrating that Respondent is culpable of willfully violating a single count of rule 3-700(A)(2) (improper withdrawal from employment). The court recommends that Respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation for a period of two years subject to a 30-day actual suspension.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on November 16, 2015. On February 23, 2016, Respondent filed a response to the NDC.

The parties filed a Stipulation as to Facts and Admission of Documents on May 25, 2016. A single-day trial was held on May 19, 2016. The State Bar was represented by Deputy Trial Counsel Hugh G. Radigan. Respondent represented himself. On May 25, 2016, the court took this matter under submission. The State Bar and Respondent filed their closing argument briefs on June 3, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 21, 1983 and has been a member of the State Bar of California at all times since that date. These findings of fact are based on the record, evidence admitted at trial, and limited facts set forth by the parties in their factual stipulation.

Case No. 15-O-10800 – The Harris Matter

Facts

James Harris is a 79-year old man who worked as a musician upon his retirement from the United States Army in 1969. After his wife died in 2007, Harris applied for his wife's pension benefits from AT&T, but AT&T denied his claim.

In 2012, Harris found Respondent's name and telephone number in a newsletter. He called Respondent and asked Respondent to represent him in an effort to obtain his deceased wife's pension benefits. About one week following Harris' initial phone call, Respondent met with Harris at Harris' home. Harris provided Respondent with preliminary information about his matter and provided Respondent with a file containing documents related to the benefit claim. Respondent told Harris he would review the documents and "look into the matter." Respondent

never presented Harris with a written fee agreement, and the two never discussed Respondent's fees. Harris believed that Respondent agreed to represent him because after discussing his matter, Respondent indicated "I'll see what I can do."

During the first six months following their initial meeting, Harris and Respondent spoke at least three times. Respondent never provided Harris an evaluation of Harris' matter, and he offered him no substantive legal advice. Respondent testified that their conversations were brief, informal discussions where they exchanged pleasantries. Respondent also indicated that Harris informed him that he spoke to another attorney and a judge about his matter. Respondent continued to advise Harris that he was "looking into" his matter. Thereafter in 2013 and 2014, Harris called Respondent at least once per month to find out the status of his case. On some occasions, Harris left messages and other times, he just hung up. Respondent never responded to these phone calls.

Since Respondent did not respond to Harris' inquiries, Harris sought assistance from attorney Andrew Wolfberg in July 2014. Initially, Wolfberg encouraged Harris to persist with trying to communicate with Respondent, but by January 2015, Respondent still had not responded to Harris' messages. Thus, on or about January 13, 2015, Wolfberg assisted Harris with preparing and submitting a complaint to the State Bar. Additionally, Wolfberg drafted a letter to Respondent dated March 10, 2015, that Harris signed. The letter provides, "You promised to help me get my wife's pension," and "[i]t has been a very long time and you have not provided me with a status on my case." The letter concludes with Harris requesting a return of the file and the documents Harris provided Respondent in 2012. Respondent did not respond to Harris' letter.

Respondent testified that he never considered Harris a client. He never told Harris that he would represent him. When he indicated he would "look into" Harris' matter, he only meant he

would investigate the matter, not that he would represent Harris in obtaining Harris' wife's pension benefits. When Respondent did communicate with Harris, Respondent never informed him that he was not Harris' attorney. Respondent acknowledged that Harris' March 2015 letter put him on notice that Harris believed Respondent was his attorney, but Respondent did not respond to Harris' letter because he was representing himself in divorce proceedings.

On or about July 17, 2015, Respondent provided Harris with Harris' original documents.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])³

Count Two - (§ 6068, subd. (m) [Failure to Communicate])⁴

Count Four - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])⁵

In Count One, the State Bar charged Respondent with intentionally, recklessly, or repeatedly failing to perform legal services by taking no meaningful steps towards obtaining monetary benefits from Harris' late wife's pension plan, in violation of rule 3-110(A). In Count Two, Respondent is charged with failing to promptly respond to Harris' reasonable status inquiries. In Count Four, the State Bar charged Respondent with willfully violating rule 3-700(D)(1) by failing to return Harris' file upon termination of Respondent's employment. As set forth below, the facts that support a culpability finding for each of these charges are duplicative

³ Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence

⁴ Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

⁵ Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

of the facts that support the culpability finding for the improper withdrawal charge in Count Three. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 10-11 [facts surrounding failure to perform duplicative of facts surrounding improper withdrawal]; *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 536 [section 6068, subd. (m) violation dismissed as duplicative of rule 3-700(A)(2) charge]; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280-281 [failure to return client file was one basis for finding respondent culpable of violating rule 3-700(D)(1)].) Thus, Counts One, Two and Four are dismissed with prejudice. (See *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1307 [although filing duplicative charges are proper if supported by evidence, duplicative finding of misconduct is nevertheless dismissed when identical facts underlie multiple allegations of misconduct].)

Count Three - (Rule 3-700(A)(2) [Improper Withdrawal from Employment])⁶

The NDC charged Respondent with willfully violating rule 3-700(A)(2) by withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to Harris. A rule 3-700(A)(2) violation may be established whether or not prejudice actually occurs. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115.) Respondent asserts that he is not culpable of any misconduct because Harris was not his client. The court rejects this argument and finds that an attorney-client relationship existed.

Although no fee agreement existed between Respondent and Harris, and Respondent maintains that he agreed to merely investigate Harris' benefits claim, these facts do not preclude the existence of an attorney-client relationship. (*Miller v. Metzinger* (1979) 91 Cal.App.3d 31,

⁶ Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

39 [“absence of an agreement with respect to the fee to be charged” and attorney’s statements that “his function was purely investigatory” does not prevent the attorney-client relationship from arising].) Harris reasonably believed that he had an attorney-client relationship with Respondent because during the conversations after their initial meeting, Respondent never told Harris that he did not represent him,⁷ Respondent repeatedly told Harris that he was looking into his matter, and Respondent kept Harris’ documents over a year without returning them. Respondent’s failure to explain that he did not represent Harris after receiving Harris’ March 2015 letter further supports the existence of an attorney-client relationship. The facts demonstrate that Respondent “led [Harris] reasonably to believe he was representing him, that it must have been clear to [Respondent] that [Harris] was led to so believe, and that [Respondent] did not advise [Harris] that he was not a client.” (*Butler v. State Bar* (1986) 42 Cal.3d 323, 329.) As such, the court finds that Respondent and Harris had an attorney-client relationship.

Respondent failed to provide any service of value to Harris. He had Harris’ file from 2012 until July 2015, yet he never provided Harris an evaluation of his claim or even contacted AT&T about Harris’ matter. Respondent failed to respond to Harris’ numerous status inquiry phone calls beginning in 2013. With no legal services provided and no communication from Respondent for at least 18 months,⁸ it is clear that Respondent abandoned Harris and withdrew from representing him. After Respondent’s withdrawal, Harris requested his file in a March 10, 2015 letter, yet Respondent never answered the letter, and it was not until the State Bar’s

⁷ Respondent testified that during the conversations he and Respondent explained pleasantries but did not discuss Harris’ matter. This court does not find Respondent’s testimony credible.

⁸ Respondent met with Harris in 2012. Respondent acknowledged that he and Harris communicated during the first six months after their initial meeting. The latest date that their initial meeting could have occurred was December 2012. The last time Respondent could have spoken to Harris was in June 2013. Thus, Respondent failed to respond to Harris’ status inquiries for at least 18 months – June 2013 through December 2014.

involvement that Respondent returned Harris' file on July 17, 2015.⁹ Respondent's complete failure to work on Harris' matter after obtaining Harris documents in 2012, his failure to communicate with Harris after 2013, and his failure to promptly return Harris' file upon Harris' request provide clear and convincing evidence that Respondent abandoned Harris, in willful violation of rule 3-700(A)(2).

Aggravation¹⁰

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

Prior Record of Discipline (Std. 1.5(a).)

Ostrove I

Effective May 28, 2015, the Supreme Court suspended Respondent for one year, stayed, and placed him on probation for two years with an actual suspension of 90 days. Pursuant to a stipulation that Respondent signed on December 8, 2014, Respondent acknowledged his misconduct in three client matters. In the first matter, Respondent failed to provide legal services with competence when he failed to finalize a probate matter, failed to respond to his client's status inquiries in May 2010, June 2013 and June 2014, and failed to keep his client reasonably informed of significant developments. In the second matter, Respondent failed to respond to reasonable status inquiries in 2013 and 2014, failed to provide an accounting, failed to cooperate, and failed to refund unearned fees. In the third client matter, Respondent failed to

⁹ Under the express terms of rule 3-700(A)(2), after an attorney has withdrawn from employment, the attorney's failure to provide the client with his or her file as outlined in rule 3-700(D)(1) is a portion of conduct "properly disciplinable as a violation of rule 3-700(A)(2)." (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.)

¹⁰ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

provide legal services with competence when he failed to pursue a probate matter on behalf of a client, failed to respond to reasonable status inquiries in 2014, failed to provide an accounting, failed to promptly pay out entrusted funds, and failed to deposit \$1,500 in advance costs into a client trust account. Respondent's misconduct was aggravated by multiple acts of misconduct, client harm, and indifference, but tempered by 30 years of discipline-free practice, family problems, cooperation and good character.

Ostrove II

In the second prior, the Supreme Court issued an order (S224490) in June 21, 2016,¹¹ revoking Respondent's probation in *Ostrove I* and suspending Respondent for one year, stayed, and placing him on probation for two years subject to conditions, including a 120-day actual suspension. Respondent's probation was revoked because he violated the terms of his probation. Respondent filed an untimely quarterly report, submitted an untimely law office management/organization plan, failed to provide adequate proof that he paid restitution, and failed to obtain psychiatric or psychological treatment for one month. His prior record was an aggravating circumstance. His belated completion of the restitution requirement and efforts to obtain psychiatric/psychological treatment were mitigating factors.

Respondent's prior discipline is an aggravating factor, but the aggravating weight is diminished because the misconduct in *Ostrove I* occurred contemporaneously with the misconduct in the instant proceeding. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619 [aggravating force of prior discipline generally diminished if underlying misconduct occurred during period of present misconduct].) The misconduct in *Ostrove I* occurred from 2010 through December 3, 2014. Respondent had already abandoned

¹¹ The court takes judicial notice of the Supreme Court order No. S224490 (State Bar Court case No. 15-PM-15232) filed on June 21, 2016.

Harris by the time his signed the *Ostrove I* stipulation on December 8, 2014. Thus, although the current misconduct was similar to the misconduct in *Ostrove I*, it does not demonstrate a continuing unwillingness or inability to conform his conduct to ethical norms. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 [“part of the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney’s inability to conform his or her conduct to ethical norms [citation]”].)

The court is mindful that Respondent’s last act of misconduct in the 3-700(A)(2) violation occurred in March 2015 when Respondent failed to promptly return Harris’ file. But, none of the misconduct in *Ostrove I* or *Ostrove II* involved misconduct of that nature. As such, Respondent’s priors did not put him on notice that his conduct was disciplinable, and he did not continue to commit similar violations.

Respondent’s prior record of discipline is afforded minimal weight.

Multiple Acts (Std. 1.5(b).)

Although Respondent is culpable of a single violation of rule 3-700(A)(2), Respondent repeatedly failed to respond to Harris’ reasonable status inquiries, failed to provide Harris with any legal services, and failed to promptly return Harris’ file. Respondent’s violation of rule 3-700(A)(2) involved multiple acts of wrongdoing.

Mitigation

It is Respondent’s burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

Family Problems

Respondent experienced serious marital difficulties in 2012. His wife filed for a divorce in September 2012, and he and his wife shared joint custody of his 12 and 15 year old daughters. He became responsible for his law practice, household and parenting duties. Respondent

represented himself during the divorce proceedings. The judgment of dissolution was entered on December 17, 2013, but marital property rights issues persisted through June 2014. Respondent is afforded moderate mitigation for his marital/family problems. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364 [lay testimony regarding marital difficulties afforded mitigation credit].)

Community Service Activities

Respondent has been a member of Temple Israel for 17 years. Currently, Respondent is a member of the board of Trustees. Over the last 12 years, he has been involved with an annual event that provides toiletries and a Christmas dinner for the homeless. Respondent has been administering the event as the chairperson for the last seven years. The mitigating weight of Respondent's community service endeavors is moderate.

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Since the misconduct involved in this case occurred contemporaneously with the misconduct in *Ostrove I*, the court considers "the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct in this period been brought as one case." (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.) The misconduct found in both cases occurred from 2010 through early 2015 and involved thirteen counts of misconduct in four client matters.

Respondent's misconduct involved the failure to perform or the abandonment of clients.

Multiple acts of misconduct, harm to one client,¹² and indifference comprise the aggravating factors in *Ostrove I* and the current proceedings. The mitigating factors are 30 years of

¹² The client harm aggravated Respondent's misconduct in *Ostrove I*. Respondent failed to finalize the probate for his client. As a result, the decedent's estate incurred personal property storage expenses and real property taxes.

discipline-free practice, family problems,¹³ cooperation, and good character resulting from Respondent's community service.

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) While they are guidelines for discipline and are not mandatory, they are given great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Moreover, the Supreme Court has instructed that the standards should be followed "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Standard 2.7(b) is the most apt. It provides, "actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests." (Std. 2.7(b).)

The State Bar argues that the appropriate discipline level is a two-year actual suspension and until Respondent proves his rehabilitation and fitness to practice law, pursuant to standard 1.2(c)(1). The State Bar cites *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944 to support its position. The court in *Brockway* determined that "[g]enerally, where four to six clients have been abandoned or suffered from incompetent representation, the discipline has included an actual suspension of two years. [Citation.]" (*Ibid.* at p. 961.) Although *Brockway* involved four clients who were abandoned or received incompetent representation, the case involved aggravating circumstances of moral turpitude for the overreaching of vulnerable clients and a prior discipline record. Moreover, in reaching the discipline determination, the court relied on cases where the attorney harmed vulnerable or

¹³ In *Ostrove I*, Respondent's financial and marital difficulties were considered "family problems," which were mitigating. Respondent's psychiatrist established a nexus between Respondent's personal problems and his misconduct. Respondent started treatment in October 2013 and at the time, he was in compliance with his treatment.

unsophisticated clients and had one prior (*Bernstein v. State Bar* (1990) 50 Cal.3d 221; *Nizinski v. State Bar* (1975) 14 Cal.3d 587); or the attorney defaulted in the proceedings and had very little mitigation that was far outweighed by the aggravating factors. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220.) Those circumstances are not indicated in Respondent's case. Given these distinctions, *Brockway, supra*, is not particularly persuasive.

In addition to the standards, this court is guided by two cases to determine the appropriate level of discipline – *Matthew v. State Bar* (1989) 49 Cal.3d 784 and *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. In *Matthew*, the Supreme Court suspended an attorney for 60 days. The attorney committed misconduct over a two-year period that included the failure to perform competently and return unearned fees in three client matters. The attorney demonstrated indifference and his clients suffered financial and other harm. The attorney's brief career was not a weighty mitigating factor.

In *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, an attorney with no prior record received a one-year suspension for abandoning three clients and failing to respond to the State Bar's investigation letters. The attorney's misconduct involved moral turpitude based on his repeated and protracted deceit in two of the client matters. The misconduct was aggravated by multiple acts of wrongdoing, indifference, lack of candor and cooperation with the victims, and client harm – one client's cause of action was barred by the statute of limitations, and the attorney's inaction hurt another client's case due to a change in the law. No mitigating factors were found.

Respondent's misconduct falls in between the misconduct in *Matthew, supra*, 49 Cal.3d 784 and *Peterson, supra*, 1 Cal. State Bar Ct. Rptr. 73. Respondent's ethical violations involved four rather than three clients and extended for a longer period of time than the misconduct in

Matthew. In contrast to *Peterson*, Respondent's misconduct involved much less harm, more mitigation, and did not involve deceit.

Based on the totality of the misconduct in the current disciplinary proceeding and *Ostrove I*, the aggravating factors that are outweighed by the mitigating circumstances, and guided by prior decisions, a 120-day period of suspension is appropriate to protect the public, the courts and the legal profession. Thus, since Respondent has completed 90 days of the recommended suspension pursuant to *Ostrove I*, the court recommends a 30-day suspension for this proceeding.

Recommendations

It is recommended that respondent Kenneth Edward Ostrove, State Bar Number 111222, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation¹⁴ for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

¹⁴ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

It is not recommended that respondent be ordered to complete State Bar Ethics School because he was previously ordered to do so in Supreme Court case No. S224490.

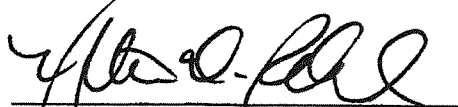
Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S224490, filed on April 28, 2015. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

Costs

It is recommended that 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.

Dated: August 23, 2016



YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 23, 2016, I deposited a true copy of the following document(s):

DECISION

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

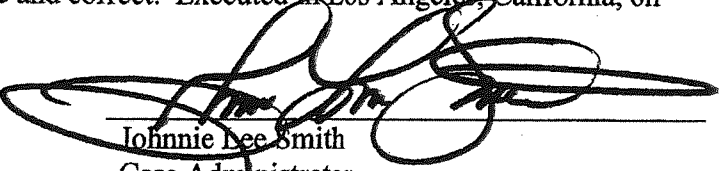
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KENNETH EDWARD OSTROVE
5650 SAINT CLAIR AVE
NORTH HOLLYWOOD, CA 91607**

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 23, 2016.


Johnnie Dee Smith
Case Administrator
State Bar Court

FILED

FEB 23 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 Kenneth E. Ostrove
2 5650 St. Clair Avenue
3 North Hollywood, California 91607
4 Telephone (818) 505-1214

5 Respondent, In Pro Per

6 STATE BAR COURT
7 HEARING DEPARTMENT - LOS ANGELES

8
9 In the Matter of:

) Case No. 15-O-10800-YDR

) RESPONDENT'S VERIFIED ANSWER TO
) NOTICE OF DISCIPLINARY CHARGES

10 KENNETH EDWARD OSTROVE,
11 No. 111222,

12 A Member of the State Bar
13

14 Kenneth E. Ostrove, Respondent herein, answers the allegations of the Notice of
15 Disciplinary Charges dated November 16, 2015, as follows:

16 **JURISDICTION**

17 1. Respondent admits the allegations of paragraph 1 of the Notice of Disciplinary
18 Charges.

19 **COUNT ONE**

20 Case No. 15-O-10800

21 Rules of Professional Conduct, rule 3-110(A)

22 [Failure to Perform with Competence]

23 2. Respondent denies the allegations of paragraph 2 of the Notice of Disciplinary
24 Charges.

25 **COUNT TWO**

26 Case No. 15-O-10800

27 Business and Profession Code, section 6068(m)

28 [Failure to Respond to Client Inquires]

3. Respondent denies the allegations of paragraph 3 of the Notice of Disciplinary
Charges.

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COUNT THREE

Case No. 15-O-10800

Rules of Professional Conduct, rule 3-700(A)(2)

[Improper Withdrawal from Employment]

4. Respondent denies the allegations of paragraph 4 of the Notice of Disciplinary Charges.

COUNT FOUR

Case No. 15-O-10800

Rules of Professional Conduct, rule 3-700(D)(1)

[Failure to Release File]

5. Respondent denies the allegations of paragraph 5 of the Notice of Disciplinary Charges.

FIRST AFFIRMATIVE DEFENSE

The Notice of Disciplinary Charges, and each count thereof, fails to state any claim or cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

With respect to Count One, Count Two, Count Three and Count Four, an attorney-client relationship and/or employment relationship was not entered into or formed between Mr. Harris and Respondent. Mr. Harris did not offer to pay any fees or compensation to Respondent and Respondent did not request that Mr. Harris pay any fees, compensation, costs or other remuneration. Respondent did not, at any time, say, imply, indicate, agree or otherwise communicate, orally or in writing, that he was intending to or was going to provide legal services to obtain monetary benefits from Mr. Harris' wife's pension plan. At most, Respondent said he would try and look into the matter.

THIRD AFFIRMATIVE DEFENSE

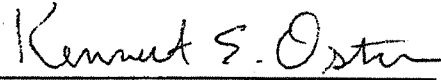
Mr. Harris told Respondent on several occasions that he had spoken to one or more other attorneys and a Judge, who opined that Mr. Harris might have a viable claim. Respondent advised Mr. Harris to confer with and utilize those persons to assist him with his potential claim. Mr. Harris also told Respondent that Mr. Harris had spoken with one or more people at the

1 Social Security Administration regarding his claim, and Respondent advised Mr. Harris to
2 follow-up on those conversations regarding his potential claim.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Respondent reserves the right to assert additional affirmative defenses based on
5 discovery, investigation and/or other proceedings in this matter.

6 Dated: February 22, 2016

7 
8 Kenneth E. Ostrove
9 Respondent, In Pro Per

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I have read the foregoing Respondent's Verified Answer to Notice of Disciplinary Charges

and know its contents.

CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am [] an Officer [] a partner [] a [] of []

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. [] I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. [] The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[] I am one of the attorneys for [] a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on February 22, 2016, at North Hollywood, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Kenneth E. Ostrove

Type or Print Name

[Handwritten Signature]

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of [] State of California.

I am over the age of 18 and not a party to the within action; my business address is: []

On, [] I served the foregoing document described as []

[] on [] in this action

- [] by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
[] by placing [] the original [] a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

[] *I deposited such envelope in the mail at [] California. The envelope was mailed with postage thereon fully prepaid.

[] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at [] California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on [] at [] California.

[] **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on [] at [] California.

[] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Legal Solutions Co Plus

Rev. 7/89

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kenneth E. Ostrove 5650 St. Clair Avenue North Hollywood, California 91607</p> <p>TELEPHONE NO.: (818) 505-1214 FAX NO. (Optional): EMAIL ADDRESS (Optional): ATTORNEY FOR (Name): Respondent, In Pro Per</p>	<p>FOR COURT USE ONLY</p>
<p>STATE BAR COURT</p> <p>STREET ADDRESS: 845 S. Figueroa Street MAILING ADDRESS: 845 S. Figueroa Street CITY AND ZIP CODE: Los Angeles 90017 BRANCH NAME:</p>	
<p>PETITIONER/PLAINTIFF: State Bar of California</p> <p>RESPONDENT/DEFENDANT: Kenneth E. Ostrove</p>	
<p>PROOF OF PERSONAL SERVICE—CIVIL</p>	<p>CASE NUMBER: 15-O-10800-YDR</p>

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age.
2. I served the following documents (specify):

RESPONDENT'S VERIFIED ANSWER TO NOTICE OF DISCIPLINARY CHARGES

The documents are listed in the Attachment to Proof of Personal Service—Civil (Documents Served) (form POS-020(D)).

3. I personally served the following persons at the address, date, and time stated:

- a. Name: Hugh Radigan
- b. Address: 845 S. FIGUEROA STREET, LOS ANGELES, CA 90017
- c. Date: February 23, 2016
- d. Time: 8:42 AM

The persons are listed in the Attachment to Proof of Personal Service—Civil (Persons Served) (form POS-020(P)).

4. I am

- a. not a registered California process server.
- b. a registered California process server.
- c. an employee or independent contractor of a registered California process server.
- d. exempt from registration under Business & Professions Code section 22350(b).

5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):

KENNETH E. OSTROVE
5650 ST. CLAIR AVENUE
NORTH HOLLYWOOD, CA 91607
(818) 505-1214

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7. I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: February 23, 2016

Kenneth E. Ostrove

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

KS
 (SIGNATURE OF PERSON WHO SERVED THE PAPERS)

PUBLIC MATTER

FILED

NOV 16 2015
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

1 STATE BAR OF CALIFORNIA
 2 OFFICE OF CHIEF TRIAL COUNSEL
 3 JAYNE KIM, No. 174614
 4 CHIEF TRIAL COUNSEL
 5 JOSEPH R. CARLUCCI, No. 172309
 6 DEPUTY CHIEF TRIAL COUNSEL
 7 MELANIE J. LAWRENCE, No. 230102
 8 ASSISTANT CHIEF TRIAL COUNSEL
 9 MURRAY B. GREENBERG, No. 142678
 10 SUPERVISING SENIOR TRIAL COUNSEL
 11 DIANE J. MEYERS, No. 146643
 12 DEPUTY TRIAL COUNSEL
 13 845 South Figueroa Street
 14 Los Angeles, California 90017-2515
 15 Telephone: (213) 765-1496

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

13	In the Matter of:)	Case No. 15-O-10800
14	KENNETH EDWARD OSTROVE,)	NOTICE OF DISCIPLINARY CHARGES
15	No. 111222,)	
16	A Member of the State Bar)	

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 22 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;**
- 23 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

The State Bar of California alleges:

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JURISDICTION

1. Kenneth Edward Ostrove (“respondent”) was admitted to the practice of law in the State of California on December 21, 1983, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 15-O-10800
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. In or about 2012, James Harris employed respondent to perform legal services, namely to obtain monetary benefits from his late wife’s pension plan, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by not taking any meaningful steps towards obtaining the benefits for his client, including not contacting the pension provider.

COUNT TWO

Case No. 15-O-10800
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

3. Respondent failed to respond promptly to weekly telephonic reasonable status inquiries made by respondent’s client, James Harris, between in or about 2012 and March 2015 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

COUNT THREE

Case No. 15-O-10800
Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal from Employment]

4. Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent’s client, James Harris, including giving due notice to the client, allowing time for employment of other counsel and complying with rule 3-700(D), by constructively terminating respondent’s employment in or before 2014 after respondent failed to take any substantive action on the client’s behalf, and thereafter failing to

1 inform the client that respondent was withdrawing from employment and failing to promptly
2 release the client file to the client upon the client's request on or about March 10, 2015 until in or
3 about August 2015, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

4 COUNT FOUR

5 Case No. 15-O-10800
6 Rules of Professional Conduct, rule 3-700(D)(1)
7 [Failure to Release File]

8 5. Respondent failed to release promptly, after termination of respondent's employment
9 in or before 2014, to respondent's client, James Harris, all of the client's papers and property
10 following the client's request for the client's file on or about March 10, 2015, in willful violation
11 of Rules of Professional Conduct, rule 3-700(D)(1).

12 NOTICE - INACTIVE ENROLLMENT!

13 YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
14 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
15 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL
16 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
17 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
18 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
19 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
20 RECOMMENDED BY THE COURT.

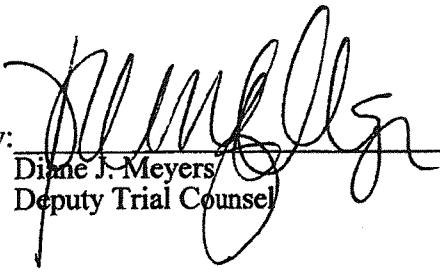
21 NOTICE - COST ASSESSMENT!

22 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC
23 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS
24 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING
25 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND
26 PROFESSIONS CODE SECTION 6086.10.

27 Respectfully submitted,

28 THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: November 16, 2015

By: 
Diane J. Meyers
Deputy Trial Counsel

DECLARATION OF SERVICE

CASE NUMBER(s): 15-O-10800

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

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

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**
- 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 Los Angeles.
- By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**
- 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 Los Angeles.
- By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**
- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service (UPS).
- By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**
Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
- By Electronic Service: (CCP § 1010.6)**
Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 9414 7266 9904 2010 0693 17 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: _____ addressed to: (see below)

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
KENNETH EDWARD OSTROVE	5650 SAINT CLAIR AVE. NORTH HOLLYWOOD, CA 91607	Electronic Address	

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). 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, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

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

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

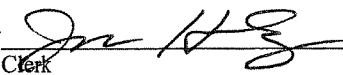
DATED: November 16, 2015

SIGNED: 
SANDRA JONES
Declarant



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 February 20, 2019
State Bar Court, State Bar of California,
Los Angeles

By 
Clerk

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 25, 2019, I deposited a true copy of the following document(s):

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

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

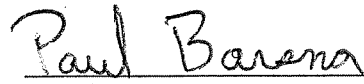
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

KENNETH EDWARD OSTROVE
5650 SAINT CLAIR AVE
VALLEY VILLAGE, CA 91607-1725

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

HUGH G. RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 25, 2019.



Paul Barona
Court Specialist
State Bar Court