

ORIGINAL

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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Laura Huggins Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2537 Bar # 294148	Case Number(s): 16-O-17027-LMA 16-O-18029 16-O-18114 17-O-00845 (inv) 17-O-02454 (inv)	For Court use only PUBLIC MATTER FILED AUG 14 2017 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent John David Abel 1865 Herndon Ave, Ste 257 Clovis, CA 93611 (559) 321-1977 Bar # 230796	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: JOHN DAVID ABEL Bar # 230796 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2004**.
- (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 **26** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)

Actual Suspension



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- (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: **Three 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(h) & 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) ☐ **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.

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- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment to Stipulation, at page 22.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

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

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- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline - See Attachment to Stipulation, at page 22.
Pretrial Stipulation - See Attachment to Stipulation, at page 22.
Family Difficulties - See Attachment to Stipulation, at page 23.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **six (6) months**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

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

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

- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input 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 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:**

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In the Matter of: JOHN DAVID ABEL	Case Number(s): 16-O-17027-LMA, 16-O-18029, 16-O-18114, 17-O-00845 (inv), 17-O-02454 (inv)
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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
Anthony Jacobs	\$2,000	July 1, 2016
Robert Davis	\$1,000	September 16, 2010
Francisco Rivera	\$1,000	March 24, 2016
Bulmaro Iturbide	\$2,000	July 27, 2015

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **120 days prior to the expiration of probation, notwithstanding section (b) of the Financial Conditions.**

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
Anthony Jacobs	\$50	1st day of each month
Robert Davis	\$50	1st day of each month
Francisco Rivera	\$50	1st day of each month
Bulmaro Iturbide	\$50	1st day of each month

- ☒ 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";

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: JOHN DAVID ABEL

CASE NUMBERS: 16-O-17027-LMA, 16-O-18029, 16-O-18114,
 17-O-00845 (inv), and 17-O-02454 (inv)

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 Rules of Professional Conduct.

Case No. 16-O-17027-LMA (Complainant: Anthony Jacobs)

FACTS:

1. On January 3, 2016, Anthony Jacobs ("Jacobs") was arrested in connection with two misdemeanor violations of the California Vehicle Code.

2. On January 13, 2016, respondent and Jacobs entered into a verbal agreement whereby respondent agreed to represent Jacobs in any future criminal prosecution stemming from Jacobs' arrest on January 3, 2016. (See Madera County Superior Court case number SCR015866.) The verbal agreement provided for a flat fee of \$2,800 with \$1,400 due immediately. The remainder was to be paid in \$100 installments that were due on or before the 15th of every month, until paid in full. On February 3, 2016, Jacobs received a professional services agreement from respondent's law office that reflected the January 13, 2016 verbal contract for legal services.

3. Between January 2016 and July 2016, Jacobs paid respondent a total of \$2,000 in the following monthly installments:

<u>MONTH, YEAR</u>	<u>AMOUNT</u>
January 2016	\$ 1,400
February 2016	\$ 100
March 2016	\$ 100
April 2016	\$ 100
May 2016	\$ 100
June 2016	\$ 100
July 2016	\$ 100

4. On or about May 24, 2016, the Madera County Sheriff's Office sent Jacobs a letter informing him that an arrest warrant had been issued in connection with his January 3, 2016 misdemeanor violations. On or about May 28, 2016, Jacobs received this letter and subsequently sent respondent a text message to notify him of the warrant.

5. On May 31, 2016, Jacobs called the Madera County Superior Court and added his matter to the court's June 7, 2016 calendar. Jacobs also directed the superior court to fax a copy of the warrant to respondent's law office. On June 1, 2016, Jacobs texted respondent to notify him that the superior court would be faxing respondent information regarding an arraignment hearing on June 7, 2016.

6. On June 6, 2016, Jacobs sent respondent a text message stating, "You wanted a reminder of the events of my arrest. Please call me when you get a chance my court date is tomorrow."

7. On June 7, 2016, Jacobs attended the arraignment hearing at the Madera County Superior Court. Respondent failed to appear and did not call or otherwise contact Jacobs to inform him that respondent would not be attending. When the judge called Jacobs' case, another attorney, Jerry Shapiro ("Shapiro"), spoke and requested a new court date of July 21, 2016. Jacobs was unfamiliar with Shapiro and was unaware that someone other than respondent would appear on Jacobs' behalf.

8. On June 7, 2016, Jacobs sent respondent a text message stating, "I'm here at court . . . Seriously? . . . WTF? Call me ASAP . . . I would like all my money back asap. You have done nothing for me but waste my time." Respondent replied, "Anthony I ha[d] another attorney appear for me. This is routine. These cases take time. I have the majority of cases in bass lake and get the best results." Jacobs responded, "You've done nothing. I'm done with you and would like all my money back asap . . . I've done everything you asked/suggested. You were supposed to call me yesterday after I text you a "reminder" text which I did. You were supposed to meet me at court today a whole 15 minutes before court started and I didn't even get a call to say you wouldn't be there. Total waste of my time. Let me know as soon as you've sent my money back as I will need it for another attorney. Don't delay." When Jacobs demanded his money back, respondent called Jacobs and persuaded him not to terminate respondent's legal representation.

9. On July 20, 2016, Jacobs sent respondent a text message stating, "John, I haven't heard from you. You were gonna talk to your DA fri[e]nd and get back to me. Tomorrow is the court date and once again I'm really worried about you. Please call me ASAP."

10. On July 21, 2016, Jacobs sent respondent a text message stating, "Are you going to be in court for me today or what?" Respondent replied, "Yes. I will update you after the appearance." Instead, Shapiro specially appeared for respondent and continued the case to August 30, 2016. Shapiro appeared pursuant to Penal Code section 977, which allows an attorney to make an appearance on behalf of a defendant without requiring the defendant's presence in court. Shapiro entered a plea of not guilty, waived advisement of rights, waived a formal reading of the complaint, and revoked the general time waiver, i.e., Shapiro demanded a speedy trial on behalf of Jacobs. Shapiro advised respondent of these significant developments, but respondent failed to promptly share this information with Jacobs.

11. On August 1, 2016, Jacobs sent respondent a text message stating, "11 days after the appearance. What are the charges and status?"

12. On August 3, 2016, Jacobs sent respondent a text message stating, "Are you still alive? Please call me."

13. On August 5, 2016, Jacobs sent respondent a text message stating, "WTF?"

14. On August 9, 2016, Jacobs sent respondent a text message stating, "John, are you out of business or what? Called your office and it is no longer in service. Please have the decency to call me and let me know what's going on. Are you still handling my case or what?" Respondent replied, "Yes I'm handling your case. I just decided to move my office."

15. On August 10, 2016, Jacobs sent respondent a text message stating, "Where did you move your office to and what is the status of my case . . . did you talk to the DA like you said you were going to before the last appearance? And what happened at that appearance? When is the extra one scheduled for?"

16. On August 11, 2016, Jacobs sent respondent a text message stating, "Are you going to answer my questions or what. You talked me into staying with you and this is what I get? As far as I can tell, you haven't performed any of the activities you said you were going to. How can I keep sending you money when you don't answer my questions and I have not seen anything you have done on this case. I feel like I'm getting totally screwed here." Respondent replied, "Of course I'm going to take care of you." Jacobs responded, "Explain how you've done this to this point please. I keep hearing that but you aren't telling me what you've done or what the status is or anything. Answer all my questions please."

17. On August 12, 2016, respondent replied to Jacobs' August 11, 2016 text message stating, "Anthony these cases take time to get the best results. I know it's hard to be patient." Jacobs responded, "That still does not answer any of the pertinent questions regarding the last court date, status of my case, charges, what the DA had to say, next appearance date, etc. etc. . . . These are all things you said you would inform me on and have not on any of them." Respondent replied, "I'm in court let me call you after noon."

18. On August 15, 2016, Jacobs sent respondent a text stating, "John, once again, you passed a perfectly good opportunity to do what you told me you would do. Please send me a copy of everything you have in my Case Files including all correspondence as well as any filings as soon as possible. Thanks, Tony."

19. On August 16, 2016, respondent replied to Jacobs August 15, 2016 text stating, "Hey Anthony I'll talk w you in the morning."

20. On August 17, 2016, Jacobs sent respondent a text stating, "Right! Have you mailed copy of my case file as I requested last Monday?"

21. On August 30, 2016, Jacobs sent respondent a text stating, "Well John, I went to my hearing today at Bass Lake Court House. This is the 3rd time you did not appear for me. I would not have know[n] about today's hearing had I not gone to the court house myself last week and inquired about the status of my case. You talked me into staying with you when I asked for my money back the 1st time you didn't show up. I have had no answers or response from you concerning my case since then and no response to my two requests for my case Files. I request that you return all money, every penny, I've paid you. I'll need it within this next week to get another attorney to represent me in court on Sept. 20th. I'd rather not have to go through the State Bar Association to get my money. Please confirm you'll be returning my money asap."

22. On October 20, 2016, Jacobs and Shapiro appeared in superior court. Shapiro notified the court that he would represent Jacobs going forward and that he had not heard from respondent.

23. On December 15, 2016, Investigator Charny sent respondent a letter to notify respondent that the State Bar had received a complaint from Jacobs. This letter described Jacobs' allegations, directed respondent to provide the State Bar with a written response, and advised respondent that he had a duty to cooperate with the State Bar's investigation pursuant to Business and Professions Code section 6068(i). Respondent received but never responded to this letter.

24. On January 3, 2017, Investigator Charny sent respondent another letter notifying him of the investigation into the Jacobs complaint, which directed respondent to provide a written response to the allegations and cautioned respondent that failure to cooperate in a State Bar investigation could be considered a violation of Business and Professions Code section 6068(i). Respondent received but never responded to this letter.

25. On January 4, 2017, Investigator Charny interviewed Shapiro, who stated that respondent contacted him to make special appearances in Jacobs' case. After court hearings, Shapiro sent respondent follow up text messages and asked respondent what he should do with documents he received in court, such as the criminal complaint and discovery. Respondent told Shapiro to fax this information to him, which Shapiro did. On September 6, 2016, Shapiro sent respondent another text message to notify respondent that Jacobs visited Shapiro's office in a state of upset because respondent missed multiple court appearances and failed to notify Jacobs of the August 30, 2016 court date. At Jacobs' request, Shapiro became counsel of record in Jacobs' matter.

26. Respondent provided Jacobs with no legal services of value and thus earned no portion of the advanced fees Jacobs paid between January 2016 and July 2016.

27. Between January 2, 2007 and May 24, 2017, respondent maintained 2565 E. Perrin Avenue, Suite 116, in Fresno, California as his official State Bar membership records address. By August 2016, respondent had completely vacated his law office located at this address, but did not update his official State Bar membership address until May 25, 2017.

CONCLUSIONS OF LAW:

28. By failing to respond promptly to approximately nine written reasonable status inquiries made by respondent's client, Anthony Jacobs, between June 2016 and September 2016, that respondent received in a matter in which respondent agreed to provide legal services, respondent willfully violated Business and Professions Code section 6068(m).

29. By (1) failing to inform Anthony Jacobs that respondent arranged for Jerry Shapiro ("Shapiro") to specially appear at a court hearing on July 21, 2016, in Madera County Superior Court case number SCR015866; that Shapiro entered a plea of not guilty, waived an advisement of rights and formal reading of the criminal complaint, and revoked a general time waiver thereby demanding a speedy trial on Anthony Jacobs' behalf; (2) failing to respond to seven text messages that Anthony Jacobs – who was not present at the July 21, 2016 hearing – sent to respondent between August 1, 2016 and August 12, 2016, requesting a status update; and (3) failing to advise Anthony Jacobs that the superior court scheduled a hearing in his matter on August 30, 2016, respondent failed to keep respondent's client, Anthony Jacobs, reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

30. By (1) failing to meet with Anthony Jacobs on June 6, 2016; (2) failing to attend a court hearing on June 7, 2016, in Madera County Superior Court case number SCR015866, which required the superior court to reschedule the hearing in light of respondent's absence; (3) failing to personally appear at a court hearing on July 21, 2016; (4) failing to provide Anthony Jacobs with an update regarding the developments that occurred at the hearing on July 21, 2016; and (5) failing to appear at a court hearing on August 30, 2016, respondent intentionally, recklessly, or repeatedly failed to perform with

competence in a matter in which Anthony Jacobs had employed respondent to perform legal services, in willful violation of Rules of Professional Conduct, rule 3-110(A).

31. By informing Anthony Jacobs on July 21, 2016 that respondent would be personally present at a hearing on that date, when respondent made last-minute arrangements for alternate counsel to specially appear, and failing to inform Anthony Jacobs of this development, respondent was grossly negligent in not knowing that his statement to Anthony Jacobs was false, and thereby committed an act involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code section 6106.

32. By failing to release Jacobs' client file following the termination of respondent's employment, after respondent received Jacobs' request for the return of his client file on August 30, 2016, respondent failed to release promptly all of the client's papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

33. By failing to return the \$2,000 advanced fee to Anthony Jacobs, respondent's client, after respondent failed to attend court hearings, failed to provide status updates, and failed to perform any legal services related to Anthony Jacobs' representation in Madera County Superior Court case number SCR015866, and upon the termination of respondent's legal services on August 30, 2016, respondent failed to promptly return any part of the unearned advanced fee to Jacobs, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

34. By failing to respond in writing to the State Bar's letters dated December 15, 2016 and January 3, 2017, requesting a written response to the allegations of misconduct in State Bar case number 16-O-17027, which respondent received, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

35. By failing to notify the State Bar within 30 days that respondent vacated his law office in August 2016, which was the address respondent maintained in his official membership records of the State Bar, respondent failed to comply with the requirements of Business and Professions Code section 6002.1, in willful violation of Business and Professions Code section 6068(j).

Case No. 16-O-18029 (Complainant: Hon. Michael A. Fagalde)

FACTS:

36. This matter was referred to the State Bar by the Honorable Michael A. Fagalde ("Judge Fagalde") of the Mariposa County Superior Court.

37. On December 14, 2015, Travis Ulrich ("Ulrich") was arraigned on a misdemeanor complaint in Mariposa County Superior Court case number CR-TR-15-0013438. On that date, appointed counsel appeared on behalf of Ulrich. Court minutes noted that Ulrich intended to hire private counsel by January 11, 2016, which was the next hearing date. Ulrich was released from custody on his own recognizance and hired respondent shortly thereafter to represent him in this matter.

38. On January 8, 2016, respondent sent a text message to Gerald Shapiro ("Shapiro"), an attorney, asking Shapiro to specially appear on his behalf at an arraignment hearing on January 11, 2016, in the Ulrich matter, case number CR-TR-15-0013438.

39. On January 11, 2016, Shapiro specially appeared for respondent in the Ulrich matter and received a copy of the complaint. Shapiro also waived formal reading of the complaint, waived time, and entered a plea of not guilty on behalf of Ulrich. The matter was continued to March 7, 2016, for a pre-trial conference. Shapiro texted respondent that he had received the complaint and discovery but respondent never replied.

40. On March 7, 2016, respondent sent an email to Eugene Action ("Action"), an attorney, asking him if he was in Mariposa County that day. On that same date, Action specially appeared for respondent at a pre-trial conference in the Ulrich matter. Action requested a continuance. The Honorable F. Dana Walton ("Judge Walton") granted Action's request and continued the pre-trial conference to April 5, 2016. Ulrich was not present at this hearing because the court allowed Action to appear for him pursuant to Penal Code section 977, which waived the personal appearance of Ulrich when counsel appeared on his behalf. After the hearing, Action sent respondent an email stating, "Ulrich—Set for April 5, 2016."

41. On April 5, 2016, Action specially appeared for respondent at a pre-trial conference in the Ulrich matter. Action requested another continuance. Judge Walton granted the request and continued the pre-trial conference to May 10, 2016. Ulrich was not present at this hearing because the court allowed Action to appear for him pursuant to Penal Code section 977.

42. On May 10, 2016, neither respondent nor Ulrich appeared at a pre-trial conference in the Ulrich matter. Judge Walton issued a bench warrant in the amount of \$10,000 for the arrest of Ulrich, but held the warrant until May 12, 2016.

43. On May 11, 2016, Philip Dodgen ("DDA Dodgen"), a Deputy District Attorney for the Mariposa County District Attorney's Office, emailed an offer to respondent using the email address reflected on respondent's public State Bar membership record (abel@usa.net). Respondent never responded to this email.

44. On May 12, 2016, Action specially appeared for respondent at a pre-trial conference in the Ulrich matter. Judge Walton recalled the bench warrant and continued the pre-trial conference to June 16, 2016. Ulrich was not present at this hearing.

45. On June 16, 2016, Action specially appeared for respondent at a pre-trial conference in the Ulrich matter. Ulrich was not present at this hearing. Judge Fagalde issued a \$15,000 bench warrant for Ulrich's arrest, but held the warrant until June 21, 2016.

46. On June 21, 2016, Action specially appeared for respondent at a pre-trial conference in the Ulrich matter. Ulrich was not present at this hearing. Judge Walton issued a bench warrant for the arrest of Ulrich in the amount of \$15,000, but held the bench warrant until June 27, 2016. Court minutes reflect that Judge Walton ordered respondent and/or Ulrich to personally appear at the next hearing.

47. On June 24, 2016, MarLee Beaudoin, a Mariposa County Superior Court Clerk, emailed respondent to notify him that Ulrich failed to appear in court on six separate occasions, with no appearance by counsel, in case number CR-Tr-15-0013438. The email stated that the court ordered respondent and/or Ulrich to appear on June 27, 2016.

48. On June 27, 2016, respondent was late to court and Action initially made a special appearance in the Ulrich matter. Once respondent arrived, he spoke with DDA Dodgen and they discussed the settlement offer. Respondent gave DDA Dodgen a business card with contact information

that confirmed his email address (abel@usa.net). Judge Walton continued the matter to July 25, 2016. Ulrich was not present at this hearing.

49. On July 25, 2016, respondent and Ulrich failed to appear at a pre-trial conference in the Ulrich matter. Judge Walton issued a \$15,000 bench warrant for Ulrich's arrest, but held the warrant until August 1, 2016.

50. On July 29, 2016, DDA Dodgen called respondent and left him a voicemail stating that the court had continued the case to August 1, 2016.

51. On August 1, 2016, respondent and Ulrich failed to appear at a pre-trial conference in the Ulrich matter. Judge Walton stayed the bench warrant until August 8, 2016.

52. On August 8, 2016, respondent and Ulrich failed to appear at a pre-trial conference in the Ulrich matter. Judge Walton stayed the warrant and issued an Order to Show Cause in re Contempt ("OSC"). Court minutes show that respondent was served with the OSC by mail, which respondent received. The OSC ordered respondent to appear on October 4, 2016, and alleged that respondent failed to appear in court as directed on July 25, 2016, August 1, 2016, and August 8, 2016. However, the court failed to complete and attach a proof of service.

53. On October 4, 2016, respondent failed to appear at the OSC hearing in the Ulrich matter. Judge Walton issued a new Order to Show Cause In Re Contempt, which respondent received. The OSC was served on respondent by mail and was accompanied by a proof of service. The court held the bench warrant that had been issued for Ulrich until November 22, 2016, and reset bail at \$10,000.

54. On November 22, 2016, respondent failed to appear at the properly noticed OSC hearing in the Ulrich matter. The OSC hearing was continued to November 29, 2016. The Mariposa County Superior Court sent respondent a letter notifying him of his failures to appear at the OSC hearings, which respondent received. The letter further advised that Ulrich was subject to a \$10,000 bench warrant and directed respondent to contact the court.

55. On November 29, 2016, respondent failed to appear at the OSC hearing in the Ulrich matter. The Mariposa County Superior Court relieved respondent as the attorney of record and appointed new counsel. The court continued the matter to January 10, 2017, and held the warrant until that date.

56. On December 1, 2016, the Mariposa County Superior Court sent respondent a letter notifying him that he failed to appear at an OSC hearing on November 29, 2016, and that he was subsequently relieved as counsel of record. Respondent received this letter.

57. On January 4, 2017, Investigator Charny sent a letter to respondent at respondent's official State Bar membership records address. The letter advised respondent that the State Bar received a complaint from Judge Fagalde alleging that respondent repeatedly failed to appear in court in the Ulrich matter. The letter directed respondent to provide a written response to the allegations and informed respondent that he had a duty to cooperate with the State Bar's investigation under Business and Professions Code section 6068(i). Respondent received this letter but never responded.

58. On February 14, 2017, Investigator Charny received an email from Action that explained his involvement in the Ulrich matter. According to Action, he "stepped in to mitigate damage when [respondent] was not [in court]." Action estimated stepping in for respondent approximately 3 to 4 times. Each time, Action would try to contact respondent and asked the court to contact Ulrich.

59. On February 23, 2017, Investigator Charny sent a second letter to respondent at respondent's official State Bar membership records address. The letter directed respondent to provide a written response to Judge Fagalde's allegations as described in the State Bar's letter dated January 4, 2017, and cautioned respondent that a failure to cooperate in the State Bar's investigation may be considered a violation of Business and Professions Code section 6068(i). This letter was returned to the State Bar as undeliverable on March 6, 2017.

60. On February 23, 2017, Investigator Charny sent an email to respondent at the email address listed on respondent's official State Bar membership record. The email contained an electronic copy of the State Bar's letter dated January 4, 2017, and was not returned as undeliverable. Respondent received this email but never responded.

CONCLUSIONS OF LAW:

61. By failing to make court appearances and making last-minute arrangements for special appearances on the dates of May 10, 2016, May 12, 2016, June 16, 2016, June 21, 2016, July 25, 2016, August 1, 2016, August 8, 2016, October 4, 2016, and November 22, 2016, which resulted in the issuance of stayed bench warrants for the arrest of respondent's client, Travis Ulrich, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

62. By failing to comply with the October 4, 2016, November 22, 2016, and November 29, 2016 Orders to Show Cause In Re Contempt in Mariposa County Superior Court case number, CR-TR-15-0013438, because respondent failed to appear in court as directed by the 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, in willful violation of Business and Professions Code section 6103.

63. By failing to take any action on behalf of respondent's client, Travis Ulrich, after June 27, 2016, in Mariposa County Superior Court case number CR-TR-15-0013438, respondent effectively withdrew from representation, without permission of the court to withdraw from Travis Ulrich's representation, when the rules of court required that he obtain permission, and thus respondent effectively withdrew from the employment in the case before that court, in willful violation of the Rules of Professional Conduct, rule 3-700(A)(1).

64. By failing to provide a written response to the State Bar's letter of January 4, 2017, that respondent received, which requested respondent's response to the allegations of misconduct being investigated in case number 16-O-18029, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

Case No. 16-O-18114 (Complainant: Robert Davis)

FACTS:

65. On July 14, 2010, Robert Davis ("Davis") hired respondent to obtain a Certification of Rehabilitation and Pardon. Respondent agreed to perform this legal service for a flat fee of \$1,000. Davis paid respondent \$500 on July 14, 2010, and paid the remaining \$500 on September 16, 2010.

66. At the time Davis hired respondent, it was with the understanding that respondent would have little, if any, work to perform until ten years had elapsed from the date of Davis' conviction. April of 2015 represented the ten-year mark. During the next four years, Davis occasionally sent respondent letters of recommendation and other documents that he believed were relevant to the petition. When the ten-year period elapsed in April 2015, Davis began reaching out to respondent about his case. Respondent scheduled approximately twelve meetings with Davis, but only attended one of these meetings. Respondent never offered an explanation for his many absences or notified Davis that he was not going to appear. Between 2015 and 2016, Davis phoned respondent four or five times a week and sent respondent text messages to request status updates. Respondent never returned Davis' phone calls or provided substantive replies to Davis' text messages. Sometime during the last two years, Davis was instructed to go to respondent's office to sign papers, which he did. Later, Davis realized that the papers were from when Arnold Schwarzenegger was governor, which Davis believed were useless for seeking a pardon from Jerry Brown, the current governor.

67. On December 23, 2015, Davis wrote respondent a letter stating, "I really want you to make a choi[c]e of w[h]ether you are going to handle my pardon and cert of rehab, or return my files and monies, so I can find someone who will do the work . . . You told me we need to catch the gov. Jerry Brown, and so now I'm wondering if you can keep that promise. It's been 8 months since my 10 year or decade mark." Respondent received this letter but never responded.

68. On November 26, 2016, Davis' new attorney, Eric Schweitzer, sent respondent a letter via regular and electronic mail. The letter specifically informed respondent that Mr. Schweitzer had been retained by Davis to assist with the Certificate of Rehabilitation and Pardon. Mr. Schweitzer requested Davis' client file and provided a paragraph at the bottom, which was signed by Davis, stating, "I, Robert Davis, acknowledge Eric Schweitzer as my new attorney and join the request to transfer my client file to his office." Respondent received but never responded to this letter.

69. Although respondent was ineligible to practice law between November 1, 2016 and December 15, 2016, respondent never told Davis about his ineligibility. Davis later confronted respondent about the status of his license to practice law; respondent told Davis it was only a minor setback.

70. Since November 2016, respondent has not responded to Davis' requests for the return of his client file. The file contained original versions of fifty-five different documents Davis gave respondent, including letters of recommendation. To date, respondent has not returned these documents, which Davis needs in order to move forward with his petition for Certification of Rehabilitation and Pardon.

71. On January 4, 2017, Investigator Charny sent respondent a letter notifying him that the State Bar received a complaint from Robert Davis alleging that respondent failed to perform, failed to return Davis' client file, and failed to return unearned fees. The letter directed respondent to provide the State Bar with a written response to the allegations, and advised respondent that he had a duty to cooperate in the State Bar's investigation under Business and Professions Code section 6068(i). The letter was mailed to respondent's official State Bar membership records address. Respondent received but never responded to this letter.

72. On January 19, 2017, Investigator Charny sent respondent a second letter notifying him that the State Bar had not received a written response to Davis' allegations. The letter directed respondent to provide a response and cautioned that failure to cooperate with a State Bar investigation could result in a violation of Business and Professions Code section 6068(i). The letter was sent to respondent's official State Bar membership records address. Respondent received but never responded to this letter.

73. On March 7, 2017, Davis sent respondent a letter demanding the return of his client file and all monies paid in the total amount of \$1,000. Respondent received but never responded to this letter.

74. While representing Davis, respondent provided Davis with no legal services of value and thus earned no portion of the \$1,000 flat fee.

CONCLUSIONS OF LAW:

75. By failing to file the petition for Certificate of Rehabilitation and Pardon that Robert Davis hired respondent to prepare and file, and failing to attend eleven scheduled meetings with Robert Davis, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

76. By failing to respond to the weekly telephonic reasonable status inquiries of respondent's client, Robert Davis, between 2015 and 2016, respondent failed to promptly respond to reasonable status inquiries in a matter in which respondent agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

77. By failing to return the client file to respondent's client, Robert Davis, after termination of respondent's employment on November 26, 2016, and upon Robert Davis' requests for his file on November 26, 2016, and March 7, 2017, respondent failed to return all client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

78. By failing to prepare and file a petition for Certificate of Rehabilitation and Pardon on behalf of respondent's client, Robert Davis, and therefore earning none of the \$1,000 advanced fee at the time Robert Davis terminated respondent's employment, respondent failed to refund promptly an advanced fee to his client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

79. By failing to provide a written response to the State Bar's letters of January 4, 2017, and January 19, 2017, that respondent received, which requested respondent's response to the allegations of misconduct being investigated in case number 16-O-18114, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

Case No. 17-O-00845 (inv) (Complainant: Francisco Rivera)

FACTS:

80. On April 14, 2016, in the matter of *People v. Francisco Rosas Rivera Jr.*, Merced County Superior Court case number 16CR-03082, Francisco Rivera ("Rivera") was charged with driving under the influence in violation of the California Vehicle Code. On March 24, 2016, Rivera hired respondent to represent him in this matter and to handle any related Department of Motor Vehicles ("DMV") hearings regarding the suspension of his driver's license. On that date, the parties signed a Professional Services Agreement and Rivera paid respondent \$1,000 in cash. The Professional Services Agreement stated that Rivera, a tattoo artist, would pay respondent a flat fee of \$1,400 and provide respondent with 20 hours of tattoo work. Although Rivera had not paid the flat fee in full, respondent assured Rivera that he would continue to work on the case and promised to attend Rivera's arraignment hearing.

81. On April 21, 2016, the DMV sent letters to respondent and Rivera requesting discovery and notifying them that an Administrative Per Se hearing was scheduled for May 19, 2016. Respondent received this letter.

82. On May 19, 2016, respondent informed a DMV representative that he was unable to attend the Administrative Per Se hearing because he was ill. Respondent asked to reschedule the hearing.

83. On June 1, 2016, the DMV sent respondent and Rivera letters stating that the Administrative Per Se Hearing was rescheduled for June 21, 2016. Respondent received this letter.

84. On June 16, 2016, Rivera went to the Merced County Superior Court to be arraigned on the criminal complaint in case number 16CR-03082. Rivera waited several hours for respondent in the courthouse lobby but respondent failed to appear. Rivera contacted the court clerk and was informed that the arraignment had been rescheduled for July 14, 2016. For the next two days, Rivera tried to contact respondent via telephone regarding the rescheduled arraignment. When respondent returned his calls, respondent admitted to rescheduling the hearing and apologized. Respondent told Rivera that he did not need to attend the rescheduled arraignment because respondent would appear.

85. On June 21, 2016, respondent and Rivera failed to appear at the Administrative Per Se Hearing, and no evidence was submitted on Rivera's behalf. As a result, the DMV re-imposed the suspension of Rivera's driving privilege. On that same date, the DMV forwarded a copy of the Notification of Findings and Decision to respondent, which respondent received.

86. On July 14, 2016, respondent failed to appear at the rescheduled arraignment in Rivera's matter. Rivera attended and, when his case was called, informed the court that respondent – his attorney – was still en route to the courthouse. The court allowed Rivera additional time to contact respondent. Rivera was unable to reach respondent by the time his case was re-called. The court appointed a public defender to represent Rivera, and set a new arraignment date. After the court hearing, Rivera telephoned respondent. During this conversation, respondent stated that he was too busy to attend. Rivera terminated respondent's legal representation and demanded a refund.

87. Between July 14, 2016, and December 13, 2016, Rivera called respondent's law office multiple times demanding a refund. Respondent returned only one of Rivera's calls to inform Rivera that he would in fact receive a refund.

88. Respondent provided Rivera with no legal services of value and thus earned no portion of the advanced fees Rivera paid on March 24, 2016.

89. On December 13, 2016, Rivera filed a State Bar complaint against respondent based on respondent's failure to perform and failure to provide a refund.

90. On February 22, 2017, Investigator Charny sent a letter to respondent's official State Bar membership records address, which respondent received. The letter described Rivera's allegations and directed respondent to provide a written response. Although the letter advised respondent that he had a duty to cooperate with the State Bar's investigation under Business and Professions Code section 6068(i), respondent never responded to this letter.

91. On May 9, 2017, Investigator Charny sent a second letter to respondent that described Rivera's allegations and requested a response. The letter was mailed to respondent's official State Bar membership records address, and was later returned to the State Bar as undeliverable. On May 31, 2017, Investigator Charny emailed a courtesy copy of the letter to the email address listed on

respondent's official State Bar membership record, which respondent received. Although the contents of the letter advised that a failure to respond to the allegations could be considered a violation of Business and Professions Code section 6068(i), respondent never responded.

CONCLUSIONS OF LAW:

92. By failing to take any action on Francisco Rivera's behalf in *People v. Francisco Rosas Rivera Jr.*, Merced County Superior Court case number 16CR-03082; failing to appear at a hearing in the Merced County Superior Court on July 14, 2016; and failing to take any steps to represent Francisco Rivera in the related proceedings with the Department of Motor Vehicles, including failing to appear at an Administrative Per Se Hearing on June 21, 2016, which resulted in the suspension of Francisco Rivera's driver's license, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

93. By failing to return Francisco Rivera's phone calls and voicemails between July 14, 2016, and December 13, 2016, in which Francisco Rivera requested the return of unearned fees in the amount of \$1,000 following respondent's termination and in a matter where respondent earned none of the \$1,000 advanced fee, and failing to return any portion of the advanced fee to Francisco Rivera, respondent failed to refund promptly advanced fees to his client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

94. By failing to inform Francisco Rivera, respondent's client, that respondent rescheduled Francisco Rivera's arraignment hearing on June 16, 2016 to a new date, in Merced County Superior Court case number 16CR-03082, and failing to inform Francisco Rivera that respondent failed to appear at a Department of Motor Vehicles Administrative Per Se Hearing on June 21, 2016, and that Francisco Rivera's driver's license was subsequently suspended, respondent failed to keep Francisco Rivera reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

95. By failing to provide a written response to the State Bar's letter of February 22, 2017, and email dated May 31, 2017, which respondent received, that requested respondent's response to the allegations of misconduct being investigated in case number 17-O-00845, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of Business and Professions Code section 6068(i).

Case No. 17-O-02454 (inv) (Complainant: Bulmaro Iturbide)

FACTS:

96. Bulmaro Iturbide ("Iturbide") was charged with violations of the California Vehicle Code, including driving under the influence and driving on a suspended license, in *People v. Bulmaro Iturbide*, Tulare County Superior Court case number PCM322816. On July 27, 2015, Iturbide hired respondent to represent him in this matter and to handle any related Department of Motor Vehicles ("DMV") proceedings. On that date, Iturbide paid respondent \$2,000 in exchange for his legal services.

97. On October 19, 2015, respondent failed to appear at a pre-trial conference in Iturbide's matter. Iturbide was present at this hearing. Because of respondent's absence, the court continued the pre-trial conference to November 23, 2015.

98. On April 18, 2016, respondent failed to appear at a pre-trial conference in Iturbide's matter. Iturbide was present at this hearing. Because of respondent's absence, the court continued the pre-trial conference to May 2, 2016.

99. On May 2, 2016, respondent failed to appear at a pre-trial conference in Iturbide's matter. Iturbide was present at this hearing. Because of respondent's absence, the court continued the pre-trial conference to May 9, 2016.

100. On May 9, 2016, respondent failed to appear at a pre-trial conference in Iturbide's matter. Iturbide was present at this hearing. Because of respondent's absence, the court continued the pre-trial conference to May 23, 2016. The court also issued an order to show cause ("OSC") and scheduled a hearing on the OSC for May 23, 2016. Respondent received notice of the OSC hearing.

101. On May 23, 2016, respondent failed to appear at the OSC hearing in the Iturbide matter. Based on respondent's absence, the court found respondent to be in contempt of a court order and subsequently imposed a \$500 sanction. Respondent was ordered to pay the sanction by July 31, 2016. Respondent received notice of the sanction. To date, respondent has not paid the \$500 sanction. Because of respondent's repeated absences, the court appointed counsel to represent Iturbide.

102. Respondent took no action on Iturbide's behalf in DMV proceedings concerning the status of Iturbide's driving privileges, which resulted in the suspension of Iturbide's driver's license.

103. Respondent provided Iturbide with no legal services of value and thus earned no portion of the advanced fees Iturbide paid on July 27, 2015.

104. On December 8, 2016, Iturbide attended Mandatory Fee Arbitration in the County of Fresno. (See Fresno County Bar Association case number 4055.) Respondent failed to appear at the arbitration, and the arbitrator made the following findings: respondent "provided ineffective assistance, did virtually nothing to represent [Iturbide] and caused [Iturbide] to incur unnecessary expenses." The arbitrator also found that respondent failed to appear for a DMV hearing and failed to appear in court on five occasions. Because of respondent's absences, the DMV suspended Iturbide's driver's license and the court found respondent to be in contempt. The court fined respondent \$500 and removed him as the attorney of record for Iturbide. The arbitrator awarded Iturbide \$2,000 and directed respondent to pay the \$100 fee arbitration filing fee. On December 15, 2016, the Fresno County Bar Association served a copy of the Award of Arbitrator on respondent via regular mail at respondent's official State Bar membership records address, which respondent received.

CONCLUSIONS OF LAW:

105. By failing to appear on Bulmaro Iturbide's behalf at four pre-trial conferences on the dates of October 19, 2015, April 18, 2016, May 2, 2016, and May 9, 2016, in *People v. Bulmaro Iturbide*, Tulare County Superior Court case number PCM322816, and failing to appear in related DMV proceedings, which resulted in the suspension of Bulmaro Iturbide's driver's license, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

106. By failing to inform Bulmaro Iturbide, respondent's client, that respondent failed to appear at a DMV hearing related to the status of Bulmaro Iturbide's driving privilege and that Bulmaro Iturbide's driver's license was subsequently suspended, respondent failed to keep Bulmaro Iturbide

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

107. By failing to perform any legal services of value related to the representation of respondent's client, Bulmaro Iturbide, respondent earned no portion of the advanced fee in the amount of \$2,000, and by subsequently failing to return any portion of the unearned fee to Bulmaro Iturbide upon the termination of respondent's representation, respondent failed to promptly refund an advanced fee to a client, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

108. By failing to appear at four pre-trial conferences on the dates of October 19, 2015, April 18, 2016, May 2, 2016, and May 9, 2016, in *People v. Bulmaro Iturbide*, Tulare County Superior Court case number PCM322816; failing to take any action on behalf of Bulmaro Iturbide in this matter; and failing to appear at an Order to Show Cause hearing on May 23, 2016, which caused the court to appoint counsel to represent Bulmaro Iturbide, respondent effectively withdrew from employment in a proceeding before the court without permission of the court to withdraw from Bulmaro Iturbide's representation, when the rules of court required that he obtain permission, and thus respondent effectively withdrew from the employment in the case before that court, in willful violation of the Rules of Professional Conduct, rule 3-700(A)(1).

109. By (1) failing to appear at a hearing on the Order to Show Cause ("OSC") on May 23, 2016, in *People v. Bulmaro Iturbide*, Tulare County Superior Court case number PCM322816, where: the OSC issued on May 9, 2016; respondent received notice of the OSC; the OSC ordered respondent to appear; and (2) failing to pay the court ordered sanction in the amount of \$500 where: the May 23, 2016 order directed respondent to pay the sanction and respondent received notice of the order, respondent disobeyed or violated an order of the court that required him to do or forbear an act connected with or in the course of his profession, which respondent ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent committed multiple acts of wrongdoing by abandoning a client; failing to perform in four client matters; failing to return client files in two matters; failing to return unearned fees to four clients; failing to attend court hearings; misrepresenting his intention to appear at court hearings; failing to participate in multiple State Bar investigations; failing to update his State Bar membership records address; and disobeying multiple court orders.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent was admitted to the practice of law in California in June of 2004. At the time of his earliest misconduct, respondent practiced law for approximately 11½ years without prior discipline. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [practicing for over 10 years without prior discipline is worth significant weight].)

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

State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

Family Difficulties: In the early part of 2016, respondent was in the process of ending a romantic relationship with his now ex-girlfriend, who physically abused respondent. On numerous occasions, respondent's ex-girlfriend physically struck and threatened respondent, sometimes leaving large bruises on respondent's back, chest, and arms. On July 27, 2016, respondent filed a Request for Domestic Violence Restraining Order ("Request") in the Fresno County Superior Court. On September 27, 2016, the court issued a Restraining Order After Hearing ("Order of Protection"). Among its conditions, the Order of Protection restrained respondent's ex-girlfriend from coming within 100 yards of respondent for a period of one year. Respondent's relationship with his ex-girlfriend and subsequent restraining order proceedings were a source of disruption in respondent's professional life, including his practice of law. The disruption in respondent's home-life contributed to his misconduct because respondent was less responsive to his clients, opposing counsel, and the courts than he otherwise would have been. (See *In the Matter of Deireling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [despite the absence of complete rehabilitation, mitigation for emotional difficulties was afforded to attorney who demonstrated steady progress towards rehabilitation].)

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

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

Where a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed. (Std. 1.7(a).) In the present case, respondent's misrepresentation to a client and failure to comply with court orders require the most severe sanctions under the standards – disbarment or actual suspension.

Disbarment or actual suspension is the presumed sanction for intentional or grossly negligent misrepresentations. (Std. 2.11.) The degree of the sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law. (Std. 2.11.) Here, respondent's misconduct was directly related to the practice of law. Respondent misrepresented to his client that he would personally appear at a court hearing and instead made arrangements for alternate counsel to specially appear. At the time of the misrepresentation, the client had experienced difficulty communicating with respondent and respondent was aware of the client's frustration in this regard. Because respondent's misrepresentation was grossly negligent in nature and caused little harm to the client or the administration of justice, actual suspension is the appropriate presumed sanction.

Disbarment or actual suspension is the presumed sanction for failing to comply with a court order in violation of Business and Professions Code section 6103. (Std. 2.18.) Respondent violated a court order when he failed to appear at OSC hearings in the *Ulrich* matter. The court mailed notice of the OSC hearings to an address that respondent vacated six months prior. It was respondent's duty to notify the court, opposing counsel, and the State Bar of his new address but respondent failed to do so. In the *Iturbide* matter, respondent violated a court order when he failed to appear at an OSC hearing and subsequently failed to pay a court-ordered sanction in the amount of \$500. Although this standard does not make a distinction between intentional and grossly negligent misconduct, the evidence suggests that respondent's failure to comply with the court orders in the *Ulrich* matter was the result of gross negligence because the orders were mailed to an invalid address when respondent had a duty to maintain a current address with the courts, opposing counsel, and the State Bar. Considered in their entirety, respondent's violations of the court orders – whether intentional or the product of gross negligence – were limited in scope. Consequently, actual suspension is the appropriate presumed sanction.

For the reasons discussed below, the facts and circumstances surrounding respondent's misconduct warrant a lengthy period of suspension, including an actual suspension of six months.

During the past two years, respondent engaged in twenty-six acts of misconduct involving nine distinct violations of the Rules of Professional Conduct and Business and Professions Code. Respondent's misconduct was protracted and directly related to the practice of law. Respondent abandoned five clients. Respondent's clients were forced to either hire new attorneys or obtain court-appointed counsel in order to protect their interests, and one client has an active bench warrant for his arrest in part due to respondent's abandonment. Despite multiple requests for client files and the return of unearned advanced fees, respondent has not contacted his clients regarding these requests. The evidence shows that respondent's clients, opposing counsel, specially appearing counsel, and judicial staff took great lengths to contact respondent over a significant period of time. Respondent's misconduct is aggravated by his multiple acts of misconduct, some of which significantly harmed the administration of justice.

In contrast to the facts and circumstances underlying respondent's misconduct, respondent's present willingness to resolve all of his matters with a pre-trial stipulation should be considered a substantial mitigating factor. In addition to admitting culpability with respect to the charges alleged in the Notice of Disciplinary Charges, respondent stipulated to misconduct in two pending investigations. Respondent's misconduct was also somewhat mitigated by the family difficulties he experienced last year, although it should be noted that some of respondent's misconduct pre-dated respondent's relationship with his ex-girlfriend. Finally, respondent practiced law for more than eleven years without prior discipline, which is afforded significant weight in mitigation.

A six-month actual suspension is also consistent with the case law cited below, which addresses client abandonment and failure to obey court orders.

In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the Review Department found the attorney culpable of failing to competently perform legal services related to an automatic appeal from a capital sentence, failing to timely report judicial sanctions, and failing to comply with Supreme Court orders. The attorney's misconduct spanned a five year period. In aggravation, the attorney committed multiple acts of misconduct that harmed a vulnerable client, who was incarcerated and relied on respondent to handle the appeal. In mitigation, the attorney had practiced law for 17 years without discipline prior to his misconduct and entered into a pre-trial stipulation. The attorney also received diminished mitigation for good character. Regarding level of discipline, the Review Department recommended that the attorney be suspended from the practice of law for a period of six months, stayed, and that he be placed on probation for a period of one year with conditions.

In *Harris v. State Bar* (1990) 51 Cal. 3d 1082, the attorney abandoned her client in a wrongful death suit and allowed the statute of limitations to elapse without properly filing and serving a complaint. Respondent's inaction included, failure to preserve testimony, take depositions, engage in discovery, or vigorously prosecute the wrongful death action. In aggravation, the attorney lacked remorse and her misconduct significantly prejudiced the client's case. In mitigation, the attorney suffered from typhoid fever prior to and during some of the misconduct. The Supreme Court suspended the attorney from the practice of law for three years, stayed, and placed her on probation for three years on the condition that she be actually suspended for 90 days.

Similar to *Riordan* and *Harris*, respondent abandoned his clients, failed to competently perform legal services, and failed to obey court orders. Although the underlying cases in *Riordan* and *Harris* involved more devastating consequences when the attorneys failed to perform in single client matters – by failing to file an appeal in a capital case and failing to file a wrongful death suit within the statute of limitations, respectively – respondent abandoned five clients and should receive a higher level of discipline than *Riordan* and *Harris* due to his misconduct in multiple client matters.

In summary, respondent should be actually suspended from the practice of law for a period of six months. This level of discipline is consistent with the standards as well as *Riordan* and *Harris*, and fulfills the three primary purposes of discipline, i.e., (1) protection of the public, the courts and the legal profession; (2) maintenance of the highest professional standards; and (3) preservation of 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 August 4, 2017, the discipline costs in this matter are \$7,862. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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


Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of his probation. (Rules Proc. of State Bar, rule 3201.)

In the Matter of: JOHN DAVID ABEL	Case number(s): 16-O-17027-LMA, 16-O-18029, 16-O-18114, 17-O-00845 (inv), 17-O-02454 (inv)
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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.

Respondent's Signature

Date
8/8/2017
Date

Respondent's Counsel Signature

 Deputy Trial Counsel's Signature

Print Name
Laura Huggins
Print Name

(Do not write above this line.)

In the Matter of:
JOHN DAVID ABEL

Case Number(s):
16-O-17027-LMA, 16-O-18029, 16-O-18114,
17-O-00845 (inv), 17-O-02454 (inv)

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

August 14, 2017


PAT E. MCELROY
Judge of the State Bar Court

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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 August 14, 2017, I deposited a true copy of the following document(s):

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

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

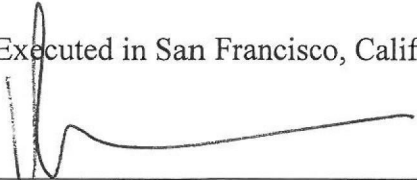
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JOHN D. ABEL
ABEL LAW OFFICES
1865 HERNDON AVE STE 257
CLOVIS, CA 93611 - 6163

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 14, 2017.



Vincent Au
Case Administrator
State Bar Court