

State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		ORIGINAL
Counsel For The State Bar Drew Massey Supervising Attorney 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1204 Bar # 244350	Case Number(s): 17-O-05687	For Court use only FILED APR 11 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent David Mugridge 5767 E Park Circle Dr Fresno, CA 93727 (559) 840-0020 Bar # 123389	PUBLIC MATTER Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: DAVID RAYMOND MUGRIDGE Bar # 123389 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 12, 1986**.
- (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 **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs are added to membership fee for calendar year following effective date of discipline.
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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 or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property..
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 7.**

(Do not write above this line.)

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

Additional aggravating circumstances

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

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

Prefiling stipulation, see page 8.

No Prior Record of Discipline, see page 8.

D. Discipline:

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

The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent is placed on probation for a period of **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(Do not write above this line.)

- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason:

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

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

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☐ No MPRE recommended. Reason:

- (2) ☐ **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID RAYMOND MUGRIDGE

CASE NUMBER: 17-O-05687

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. 17-O-05687 (State Bar Investigation)

FACTS:

1. On October 15, 2010, respondent was appointed to represent the defendant in *People v. Artemio Misael Orzco Ramirez*, then pending in Fresno County Superior Court, case number F10905182.
2. The defendant in the *Ramirez* matter was charged with four counts: (I) intercourse or sodomy with a child 10 years or younger; (II) oral copulation with a child 10 years or younger; (III) assault with intent to commit rape; and (IV) commission of a lewd act on a child.
3. The matter went to a jury trial (*Ramirez I*) and the jury convicted the defendant on counts III and IV. However, the jury was not able to reach a verdict on counts I and II and a mistrial was declared as to those counts. The matter was retried as to counts I and II (*Ramirez II*).
4. At the beginning of *Ramirez II*, respondent became aware that during *Ramirez I*, the prosecution had withheld evidence in violation of applicable law. Specifically, the victim had previously falsely accused another man of sexual contact with her.
5. During *Ramirez II*, the victim was impeached with the evidence of her prior false accusation. Also during *Ramirez II*, the defendant was impeached with his prior convictions of counts III and IV.
6. The jury in *Ramirez II* convicted the defendant of counts I and II.
7. After the conviction in *Ramirez II*, respondent moved for a new trial in *Ramirez I* because the prosecution had unlawfully withheld evidence.
8. On November 9, 2011, the trial court granted the motion for a new trial. The prosecution dismissed those charges and elected not to re-try counts III or IV.
9. At the time of the trial court's ruling on the motion for a new trial, sentencing in *Ramirez II* was still pending. At that point, respondent could have made a motion for a new trial in *Ramirez II* because in that trial the defendant was impeached with his conviction in *Ramirez I* – a conviction that had now been overturned and dismissed.

10. Respondent was aware at the time that he could have made such a motion for a new trial in *Ramirez II*. Respondent intentionally decided not to make such a motion because he believed that his client was, in fact, guilty of the charged offense.

11. Respondent did not make any attempt to withdraw as counsel for his client.

12. On November 16, 2011, the defendant was sentenced to one term of 25 years imprisonment, and one term of 15 years imprisonment to be served concurrently.

13. The defendant's convictions were then appealed to the Court of Appeals by new counsel.

14. On March 17, 2014, the Court of Appeals rendered a decision in which it found that respondent's decision not to file a motion for a new trial of *Ramirez II* amounted to ineffective assistance of counsel and remanded the matter for a decision as to whether a new trial was warranted.

15. The matter was remanded and new counsel made the motion for a new trial. On February 19, 2015, the trial court denied the motion. The defendant's new counsel again appealed that decision to the Court of Appeals.

16. On July 11, 2017, the Court of Appeals issued an opinion overturning the trial court's decision and finding that the use of the prior convictions in *Ramirez I* to impeach the defendant in *Ramirez II* warranted a new trial. The matter was again remanded to the trial court. As of this writing, the matter is pending retrial.

CONCLUSIONS OF LAW:

17. By intentionally failing to move for a new trial for his client when respondent knew such a motion was available and meritorious, respondent breached his fiduciary duty to zealously represent his client as set forth in, for example, *Mark Tanner Construction, Inc. v. HUB International Insurance Services, Inc.* (2014) 224 Cal. App. 4th 574, 585 ("lawyers have a fiduciary duty of the highest order and must represent clients zealously within the bounds of the law"), and thereby failed to support the laws of California in willful violation of Business and Professions Code, section 6068(a).

18. By failing to withdraw as counsel when respondent knew or should have known that continued employment would result in a violation of the State Bar Act (specifically, by violating Business and Professions Code, section 6068(a) as described above), respondent willfully violated Rules of Professional Conduct, rule 3-700(B)(2).

AGGRAVATING CIRCUMSTANCES.

Significant Harm to the Client and the Administration of Justice (Std. 1.5(j)). Respondent's failure to file the necessary motion for a new trial resulted in additional, unnecessary court proceedings and delay of his client's case. Specifically, it created the necessity of an appeal and remand that resulted in a more than three year delay (from November 2011 to February 2015). Harm is an aggravating factor.

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MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent has been admitted to practice law since June 1986 and has been active at all times since. Respondent has been discipline free for approximately 25 years of practice from admission to the earliest misconduct herein (2011) and is therefore entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 (ten years given “significant weight” in mitigation).)

Extraordinary Good Character (Std. 1.6(f)): Respondent has provided evidence of good character consisting of fourteen letters from a wide range of individuals in the general and legal communities who are aware of the full extent of the misconduct. Those individuals include several attorneys and speak highly of respondent’s honesty, integrity, and significant community service.

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

AUTHORITIES SUPPORTING DISCIPLINE.

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

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re 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).)

Respondent has a duty to zealously represent his client (*Mark Tanner Construction, Inc. v. HUB International Insurance Services, Inc.* (2014) 224 Cal. App. 4th 574, 585 (“lawyers have a fiduciary

duty of the highest order and must represent clients zealously within the bounds of the law").) By intentionally not making a merited motion for a new trial, respondent breached that duty.

Here, the applicable sanction is Standard 2.12(a) which presumes disbarment or actual suspension for a violation of Business and Professions Code, section 6068(a). Here, the misconduct is limited to a single instance and there is no evidence of misconduct by respondent subsequent to these events. The one-time nature of the misconduct indicates that discipline near the low end of the Standard would be appropriate prior to considering aggravating and mitigating factors.

However, aggravation and mitigation are important elements of the disciplinary analysis. Although the misconduct resulted in a substantial delay in the criminal matter, there are countervailing factors in mitigation. Specifically, respondent has a 25 year history of discipline-free practice prior to the misconduct involved here. Further, there has been no discipline since that time. This indicates that the misconduct is unusual and therefore less likely to be repeated. Additionally, respondent was forthright and candid with the State Bar during the investigation of this matter which also indicates that he has taken full responsibility for the misconduct and lesser discipline is necessary to protect the public. Moreover, respondent has produced evidence of fourteen individuals attesting to his good character. On the whole, mitigation outweighs aggravation.

Given the mitigating factors in this matter, a slight deviation from the Standard is appropriate and respondent should receive a one-year period of stayed suspension and a one-year period of probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 27, 2018, the discipline costs in this matter are \$3,125. 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


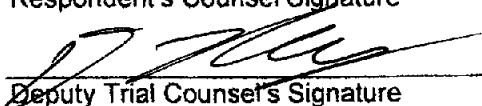
Respondent may not receive MCLE credit for completion of **State Bar Ethics School**. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: DAVID RAYMOND MUGRIDGE	Case number(s): 17-O-05687
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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>3/22/18</u> Date	<u></u> Respondent's Signature	<u>David Mugridge</u> Print Name
<u>3-23-18</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Drew Massey</u> Print Name

(Do not write above this line.)

In the Matter of:
DAVID RAYMOND MUGRIDGE

Case Number(s):
17-O-05687

STAYED SUSPENSION ORDER

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

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

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

April 10, 2018
Date

Yvette D. Roland
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 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 April 11, 2018, I deposited a true copy of the following document(s):

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

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

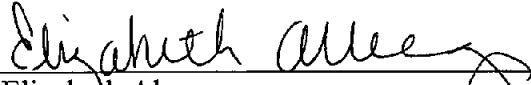
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID R. MUGRIDGE
LAW OFFICES OF DAVID R MUGRIDGE
5767 E PARK CIRCLE DR
FRESNO, CA 93727 - 5417

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

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 11, 2018.



Elizabeth Alvarez
Court Specialist
State Bar Court