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State Bar Court of California Hearing Department Los Angeles DISBARMENT			PUBLIC MATTER
Counsel For The State Bar Alex Hackert Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 213-765-1498 Bar # 267342	Case Number(s): 84-C-18994-DFM	For Court use only <div style="text-align: center;"> FILED NOV 14 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>	
Counsel For Respondent Zenia Karen Gilg 1505 Bridgeway Ste 103 Sausalito, CA 94965-1996 415-324-7071 Bar # 171922	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: TOM FRANK MANISCALCO Bar # 79308 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 **March 10, 1978**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **(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."

- (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 to be awarded to the State Bar.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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

- (1) ☐ **Prior record of discipline**
- (a) ☐ State Bar Court case # of prior case
 - (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) ☐ **Lack of Candor/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.

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

Additional mitigating circumstances: Pretrial Stipulation, see page 7.

D. Discipline: **Disbarment.**

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TOM FRANK MANISCALCO

CASE NUMBER: 84-C-18994

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that an element of the offenses for which he was convicted involve moral turpitude.

Case No. 84-C-18994 (Conviction Proceedings)

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On March 15, 1984, respondent was arrested on a warrant pursuant to a complaint filed by the Orange County District Attorney, in in Orange County Superior Court, case no. A4CF00251, which alleged that in or about May 1980 respondent killed Richard Rizzone, Rena Miley and Thomas Monahan in Westminster, California.

3. On March 20, 1984, respondent was arraigned on the complaint in case no. A4CF00251.

4. On March 29, 1984, the Orange County District Attorney filed an indictment in Orange County Superior Court, case no. A4CF00251, accusing respondent of three counts of violating Penal Code section 187 [murder], a felony, one count of violating Penal Code section 211 [robbery], a felony, and one count of violating Penal Code section 459 [burglary], a felony, regarding the killings of Richard Rizzone, Rena Miley and Thomas Monahan.

5. On April 20, 1984, a grand jury returned an indictment in case no. A4CF00251, charging respondent with three counts of violating Penal Code section 187 [murder], a felony, one count of violating Penal Code section 211 [robbery], a felony, and one count of violating Penal Code section 459 [burglary], a felony. The Orange County District Attorney dismissed case no. A4CF00251 on April 27, 1984.

6. On July 24, 1984, the Orange County District Attorney filed a superseding indictment in Orange County Superior Court, under case no. C57585, accusing respondent of three counts of violating Penal Code section 187 [murder], a felony, one count of violating Penal Code section 211 [robbery], a felony, and one count of violating Penal Code section 459 [burglary], a felony, regarding the killings of Richard Rizzone, Rena Miley and Thomas Monahan.

7. On June 19, 1986, the Orange County District Attorney filed an information in Orange County Superior Court, case no. C57585, charging respondent with three counts of violating Penal Code section

187 [murder], a felony, one count of violating Penal Code section 211 [robbery], a felony, and one count of violating Penal Code section 459 [burglary], a felony.

8. On January 3, 1990, a jury trial commenced, which ended in a mistrial on November 6, 1990.

9. On November 24, 1993, a second jury trial commenced, which concluded on March 15, 1994. At the conclusion of trial, the court issued jury instructions for first degree murder, and for second degree murder with express malice.

10. On March 25, 1994, a jury returned a verdict, finding respondent guilty of three counts of violating Penal Code section 187 [murder – second degree] for the killings of the Richard Rizzzone, Rena Miley and Thomas Monahan.

11. On April 13, 1994, the Review Department of the State Bar Court issued an order finding that respondent had been convicted of a crime involving moral turpitude and placing respondent on an interim suspension while the instant discipline case is pending.

12. On June 29, 1994, the Orange County Superior Court sentenced respondent to a term of 46 years to life in state prison.

13. On August 12, 1994, respondent filed a notice of appeal.

14. On April 23, 2001, the California Court of Appeal, Fourth Appellate District issued an opinion affirming respondent's conviction.

15. On June 19, 2001, respondent filed a petition for review with the California Supreme Court.

16. On September 12, 2001, the California Supreme Court denied respondent's petition for review.

17. On February 27, 2002, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed.

18. Thereafter, respondent exhausted all remaining appellate remedies and his conviction has become final.

CONCLUSIONS OF LAW:

19. The offenses for which respondent was convicted include an element that involves moral turpitude.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

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 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).)

At the time of respondent’s conviction, the Business and Professions Code did not provide for summary disbarment for felony convictions involving moral turpitude, unless the offense was committed in the course of the attorney’s practice, or the attorney’s client was the victim of the offense. (See Bus. & Prof. Code, former § 6102, subd. (c), as added by Stats.1985, ch. 453, § 15, p. 1754.) However, since respondent’s conviction is for, “a felony in which an element of the offense involves the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involves moral turpitude,” disbarment is appropriate. (Standard 2.15(a).) By entering into this stipulation, respondent is acknowledging that his conviction on three counts of second degree murder involves moral turpitude, *per se*, and that disbarment is appropriate under the Standards.

In issuing its interim suspension order on April 13, 1994, the Review Department of the State Bar Court found that the respondent was convicted of crimes involving moral turpitude. The California Supreme Court has defined moral turpitude as, “a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) The California Supreme Court has also stated, “In cases such as those involving convictions of murder, forgery, extortion, bribery, perjury, robbery, embezzlement and other forms of theft, no difficulty would attend the determination of the question of moral turpitude from a consideration of the record of conviction alone.” (*In re Rothrock* (1940) 16 Cal.2d 449, 454; See also, *In re Hatch* (1937) 10 Cal. 2d

147, 150 [convictions for crimes such as murder involve moral turpitude without question].) First degree murder is a per se moral turpitude crime, given the specific intent of the crime. (*In re Kirschke* (1976) 16 Cal.3d 902.) Both first and second degree murder involve, “the unlawful killing of a human being ... with malice aforethought. (Pen. Code § 187.) “Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature...” (Pen. Code §188.) The distinction between first and second degree murder is that the former includes an element of premeditation, or the killing occurred in the course of a specific factual circumstance, such as by torture or poisoning. (Pen. Code. §189.) The killing of a human being with the presence of a manifest deliberate intention to unlawfully to take away life constitutes moral turpitude, as defined by *Lesansky*. Such actions are indisputably a serious breach duty owed to the victim, and society, and is a flagrant disrespect for the law and societal norms. Therefore, respondent’s conviction, on its face, justifies disbarment. Moreover, the sanction of disbarment is necessary to fulfil the purposes of attorney discipline, including the maintenance of the highest professional standards and the preservation of the public’s confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

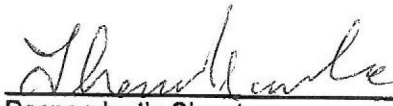
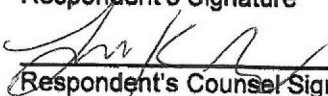
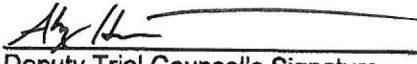
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of September 28, 2017, the discipline costs in this matter are \$696. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of TOM FRANK MANISCALCO	Case number(s): 84-C-18994
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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 Fact, Conclusions of Law and Disposition.

<u>Oct 13, 2017</u> Date	<u></u> Respondent's Signature	<u>Tom Frank Maniscalco</u> Print Name
<u>Oct. 25, 2017</u> Date	<u></u> Respondent's Counsel Signature	<u>Zenia Karen Gilg</u> Print Name
<u>11/2/2017</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Alex Hackert</u> Print Name

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In the Matter of: TOM FRANK MANISCALCO	Case Number(s): 84-C-18994
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DISBARMENT ORDER

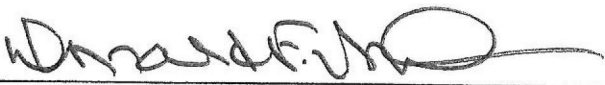
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

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.)**

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

11/14/17
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 14, 2017, I deposited a true copy of the following document(s):

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

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

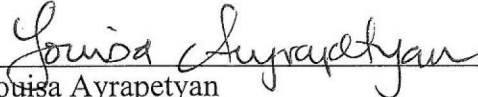
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ZENIA K. GILG
1505 BRIDGEWAY, STE 103
SAUSALITO, CA 94965 - 1996

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

ALEX J. HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 14, 2017.



Lotisa Ayrapetyan
Case Administrator
State Bar Court