

Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL BARRY G. THORPE, NO. 126422 1149 SOUTH HILL STREET LOS ANGELES, CA 90015	Case number(s) 95-0-12269 95-0-14220 95-0-14927 95-0-15898 96-0-05970 96-0-06213 97-0-14201 97-0-16973 98-0-00124 98-0-01297 00-0-10188 01-0-01381	<p align="center">(for Court's use)</p> <h1 align="center">PUBLIC MATTER</h1> <h1 align="center">FILED</h1> <p align="center">DEC 14 2001</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
Counsel for Respondent DAVID A. CLARE 2755 BRISTOL ST., #280 COSTA MESA, CA 92626-5985 kwiktag® 035 115 022 	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> 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 DAN J. DESARIO Bar # 105569 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 3, 1982.
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 17 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
2002, 2003, 2004
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

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

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).] Facts supporting aggravating circumstances are required.

(1) Prior record of discipline [see standard 1.2(f)]

(a) State Bar Court case # of prior case 96-H-6083

(b) date prior discipline effective 5/8/00

(c) Rules of Professional Conduct/ State Bar Act violations: Failure to comply with conditions of probation arising from case #94-0-17007.

(d) degree of prior discipline Private reproof

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

- a. 94-0-17007
- b. 9/24/95
- c. R.P.C. 3-110(a)
- d. Private reproof

(2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e.)] Facts supporting mitigating circumstances are required.

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances: See the attachment to this stipulation.

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of 1 year
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution to Jamie Brown per the terms of their [payee(s)] (or the Client Security Fund, if appropriate), in the amount of civil agreement, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - iii. and until Respondent does the following: _____.
- B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of 2 years, which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of 120 days
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____, and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - 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 shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all

conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall 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 shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) Other conditions negotiated by the parties:
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel 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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

In the Matter of DAN J. DESARIO

Case Number(s):

A Member of the State Bar

95-0-12269 et seq.

Law Office Management Conditions

- a. Within 90 days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ___ days/ ___ months 1 years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 3 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for 2 year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAN J. DESARIO

CASE NUMBER(S): 95-O-12269-PAB ET AL.

FACTS AND CONCLUSIONS OF LAW.

Facts

Underlying each of the charged counts in the Notice of Disciplinary Charges in this matter are the following facts.

In or about May, 1992, Respondent entered into an oral employment agreement with Howard Kaiser ("Kaiser") wherein Kaiser was to perform certain administrative duties for Respondent's law firm. These duties included answering the telephone, taking messages, scheduling appointments and running errands. Kaiser is not and never has been a licensed attorney. He had attended law school but had not passed a bar examination in any State. At this time, Respondent's law firm was located at 2029 Century Park East in Los Angeles, California.

Between June 1, 1993 and August 30, 1994, Respondent was employed as a full-time attorney for the Automobile Club of Southern California. During this time, Respondent continued to rent his office space located at 2029 Century Park East. Primarily, the office was maintained in order for Respondent to conduct a law review course business. Kaiser's employ was continued by Respondent. Kaiser's duties were to administer the operations of the law review course, including calendaring, answering phones, and processing mail.

Between October, 1993 and January, 1995, without the knowledge or

approval of the Respondent, Kaiser and his wife, Catherine Smith Kaiser, conspired to operate a clandestine law office under Respondent's name. To aid in this operation, the Kaisers opened a post office box and operated this unauthorized law firm from their own residence or at an office located at 4676 Admiralty Way, Marina Del Rey. Further, The Kaisers also opened a client trust account at Home Savings and Loan. Catherine Kaiser's sister was the branch vice-president at this bank. Respondent was not aware of this bank account and was not a signatory on the account. Only Kaiser and his wife were signatories on the account. In order to conduct litigations in Respondent's name, the Kaisers would hire contract attorneys to make appearances as necessary. Howard Kaiser also apparently impersonated Respondent on numerous occasions.

Respondent learned of the activities of the Kaisers when the State Bar initially contacted Respondent in January of 1995 regarding a complaint it had received from alleged clients Frank and Lillian Stevens. Utilizing Respondent's name, Kaiser had accepted employment from the Stevens. As a result of this single case, Respondent stipulated to a private reproof in 94-O-17007.

Having received notice that the Kaisers had signed up clients and were practicing in his name, Respondent undertook the following corrective action. Respondent filed a civil lawsuit against Howard Kaiser, Catherine Kaiser, Lillian Thompson and Home Savings and Loan, Los Angeles Superior Court - West District, Case number SC035034.

Respondent also contacted the Los Angeles County Sheriff Department and filed a complaint against the Kaisers. That matter was investigated by Detective Arlo Thykeson and Detective Jim Corbin of the Sheriff Commercial Crimes Bureau. Detective Thykeson traced the monetary proceeds of the clandestine law office opened by the Kaisers and found no evidence that Desario received any of the monies from the Kaiser practice. Instead, the monies went to the Kaisers and into an account held by Catherine Kaiser's sister, Lillian Thompson. Detective Jim Corbin has indicated to the State Bar that he believes Respondent to have been helpful and forthcoming in his cooperation with their investigation. As a result of his investigation, Detective

Corbin filed grand theft and tax evasion charges against the Kaisers. As part of a plea bargain, the Kaisers pled guilty to the tax charges.

COUNT ONE: Case No.95-O-12269

In or before January, 1994, Kaiser utilized Respondent's law office to accept employment from Klaus Friederic ("Friederic"). Respondent's law office thereafter represented Friederic in three legal matters. Thereafter, Respondent, through Kaiser, caused lawsuits to be filed on behalf of Friederic as follows: *Friederic vs. Robertson*, Los Angeles Superior Court Case no. BC 081832 (The Robertson case) and *San -Val Engineering Inc. vs. Miltex Floors*, Los Angeles Municipal Court case no. 94K24141 ("the San-Val case").

The pleadings in these matters were prepared and filed by Kaiser or other non-attorney personnel without the knowledge or supervision by the Respondent.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT FOUR: Case No. 95-O-14220

In or about June 1994, Kaiser utilized Respondent's law office to accept employment from Betty Woods ("Woods"). Thereafter Respondent's office represented Woods in three legal matters; lawsuits against Deborah Daly ("the Daly case"), against Enterprise Rent-a-car ("the Enterprise case"), and against Sonia Coss, Municipal Court case no. 9492000.

The pleadings in the Woods' cases were prepared and filed by Kaiser or other non-attorney personnel without the knowledge or supervision by the Respondent.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct,

he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT SIX: Case No. 95-O-14927

On or about March 16, 1994 , Kaiser utilized Respondent's law office to accept employment from Edward Fabey ("Fabey"). Thereafter Respondent's office represented Fabey in a guardianship proceeding involving a grandchild.

Pleadings in Fabey's matter were prepared and filed by Kaiser or other non-attorney personnel without the knowledge or supervision by the Respondent.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT NINE: Case No. 95-O-15898

On or about July 28, 1994, Kaiser utilized Respondent's law office to accept employment from Barbara J. Thomas ("Thomas") to represent her in a lawsuit against a contractor. On or about August 25, 1994, Kaiser caused a lawsuit to be filed in Los Angeles County Municipal Court, Case No. 94K28538, entitled *Thomas v. McFadden*.

Pleadings in Thomas' matter were prepared and filed by Kaiser or other non-attorney personnel without the knowledge or supervision by the Respondent.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT THIRTEEN: Case No. 96-O-06213

On or about July 2, 1994, Kaiser utilized Respondent's law office to accept employment from Kevin Landry. Kaiser thereafter used Respondent's law office to represent Landry in a civil lawsuit entitled *Richards v. Landry*, Los Angeles Municipal Court case no. 94K17749.

Kaiser, or other non-attorney personnel, prepared and filed the Answer in Landry's case without Respondent's knowledge or supervision.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT FIFTEEN: Case No. 97-O-14201

In or about July, 1994, Kaiser utilized Respondent's law office to accept employment from Enrique Ruiz ("Ruiz") to represent Ruiz as the Respondent in a marital dissolution case and child support matter, Los Angeles Superior Court Case No. BD 114250

Kaiser or other non-attorney personnel prepared and filed pleadings in Ruiz' case without Respondent's knowledge or supervision.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT SEVENTEEN: Case No. 97-O-16973

In or about January, 1994, Kaiser utilized Respondent's law office to accept employed from Terri Griggs ("Griggs") to represent her in a quiet title action. On or about August 15, 1994, Kaiser caused a Complaint to be filed on behalf of Griggs in Los Angeles County Superior Court case no. BC110793,

entitled *Griggs v. Wallace*.

Kaiser or other non-attorney personnel prepared and filed pleadings in Griggs' case without Respondent's knowledge or supervision.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

COUNT NINETEEN: Case No. 98-O-00124

On or about July 20, 1994, Kaiser utilized Respondent's office to accept employment from Tada Skara ("Skara"). Kaiser thereafter represented Skara in a property dispute matter, Los Angeles County Superior Court, Case no. 93K16379, entitled *Skara v. Mestchvan*.

Kaiser or other non-attorney personnel prepared and filed pleadings in Skara's case without Respondent's knowledge or supervision.

Legal Conclusions:

Respondent admits that by committing the aforementioned misconduct, he failed to supervise his law office and willfully violated rule 3-110(A) of the Rules of Professional Conduct.

State Bar Investigation Case No. 98-O-01297

FACTS

Respondent was employed by Bertha Coria on May 21, 1996 to represent her in a dissolution of marriage matter entitled Coria v. Coria, Los Angeles Superior Court case number BD240399. . Despite repeated reminders over a eight month period of time, Respondent failed to fully perform.

Legal Conclusions

Respondent admits that by committing the aforementioned misconduct, he willfully violated rule 3-110(A) of the Rules of Professional Conduct.

State Bar Investigation Case No. 99-O-10188

FACTS

Respondent was employed by Jamie Brown ("Brown") on March 12, 1997 to represent her in a child support modification matter entitled Alvarez v. Alvarez, Los Angeles Superior Court case number BD030938. Despite repeated reminders, Respondent failed to obtain the modification order which was the purpose of his employment. In December, 1999, Brown substituted in new counsel who successfully obtained her modification order within six months.

Brown thereafter prevailed at a fee-arbitration against Respondent and was awarded \$9,373.53. Respondent has agreed to pay this award at the rate of \$250.00 per month.

Legal Conclusions

Respondent admits that by committing the aforementioned misconduct, he willfully violated rule 3-110(A) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was October 26, 2001.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

Case No. Count Alleged Violation

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
95-O-12269	2	R.P.C. Rule 1-300(A)
95-O-12269	3	R.P.C. Rule 3-700(A)(2)
95-O-14220	5	R.P.C. Rule 1-300(A)
95-O-14927	7	R.P.C. Rule 1-300(A)
95-O-14927	8	R.P.C. Rule 3-700(A)(2)
95-O-15898	10	R.P.C. Rule 1-300(A)
95-O-15898	11	R.P.C. Rule 1-300(A)
96-O-05970	12	R.P.C. Rule 3-700(D)(1)
96-O-06213	14	R.P.C. Rule 1-300(A)
97-O-14201	16	R.P.C. Rule 1-300(A)
97-O-16973	17	B&P 6106
98-O-00124	20	R.P.C. Rule 1-300(A)

The basis for the dismissal of each of these counts is that there is insufficient evidence to sustain a finding that Respondent committed the misconduct charged in these counts. The misconduct charged in these dismissed counts arose from the actions of non-attorney Kaiser. Respondent culpability is based upon his failure to have supervised Kaiser and is addressed in the charges that Respondent will be admitting.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards section 1.7(a) requires a greater degree of any subsequent discipline. Respondent previously received a private reproof in 1995. The facts giving rise to that discipline are a subset of the facts giving rise to this current matter. Respondent received a public reproof for violating the conditions of probation which were attached to his private reproof.

The case law supporting the level of discipline in this matter is as follows:

Matter of Kaplan, (1993) 2 Cal.State Bar Ct.Rptr. 509

Matter of Bouyer, (1991) 1 Cal.State Bar Ct.Rptr. 404

Coppock v. State Bar, (1988) 44 Cal.3d 665.

Vaughn v. State Bar, (1972) 6 Cal.3d 847.

Moore v. State Bar, (1964) 62 Cal.2d 74.

MITIGATING CIRCUMSTANCES.

Though not within the dictates of Standard 1.2(e) mitigating circumstances, a factor considered by the State Bar in mitigation is that Respondent was the victim of a criminal agency in the conduct of the Kaisers.

In mitigation of Respondent's past record of discipline, it is noted that case number 94-O-17007 also involved Respondent's failure to supervise Kaiser. It was this case that led to Respondent's discovery of Kaiser's criminal conduct.

OTHER RECONDITIONS NEGOTIATED BY THE PARTIES.

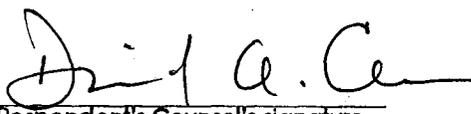
This stipulation also resolves State Bar Investigation case number 01-O-01381. In this matter, Respondent represented Marshall Finley "Finley" in a medical malpractice matter. Though not rising to the level of a willful, disciplinary offense, Respondent acknowledges that he should have engaged in better communication with Finley between January 21, 1996 and May 27, 1999.

12/8/01
Date


Respondent's signature

DAN J. DESARIO
print name

12/11/01
Date


Respondent's Counsel's signature

DAVID A. CLARE
print name

12-12-01
Date


Deputy Trial Counsel's signature

BARRY G. THORPE
print name

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.

1. On page 1, paragraph A. (7), delete "2002" and insert "2005";
2. On page 16, paragraph "Other Reconditions Negotiated by the Parties," delete "Reconditions" and insert ""Conditions."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

12-13-01
Date


Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 14, 2001, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed December 14, 2001**

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

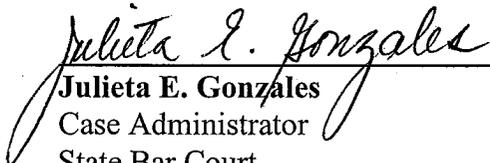
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID A CLARE ESQ
2755 BRISTOL ST #280
COSTA MESA, CA 92626-8005**

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

Barry G. Thorpe, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 14, 2001.**



Julieta E. Gonzales
Case Administrator
State Bar Court