



ORIGINAL

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT PAUL T. O'BRIEN 1149 S. Hill Street Los Angeles, CA 90015-2299 213-765-1000 Bar # 171252	Case number(s) 95-0-18080	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">APR 27 2005</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent JAMES MICHAEL V. FITZPATRICK 101 W. Broadway #1950 San Diego, CA 92101 Bar # 125313	PUBLIC MATTER	
In the Matter of JAMES MICHAEL V. FITZPATRICK Bar #125313 A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 15, 1986
(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) 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.

(Do not write above this line.)

(8) **Payment of Disciplinary Costs**—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a) costs added to membership fee for calendar year following effective date of discipline
(b) costs to be paid in equal amounts prior to February 1 for the following membership years:

_____ (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

- (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
(d) costs entirely waived

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 _____

(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) **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.

(Do not write above this line.)

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (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 ~~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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted 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) **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.

(Do not write above this line.)

- (10) **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.
- (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 Attachment p.8

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

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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 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.
- (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 in each report 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 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

(Do not write above this line.)

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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. Reason: _____

(2) **Other Conditions:**

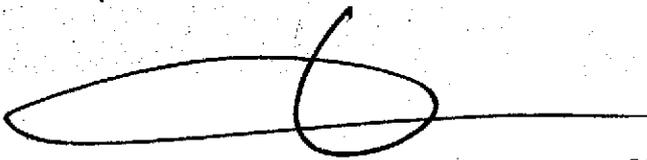
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In the Matter of JAMES MICHAEL V. FITZPATRICK	Case number(s): 95-0-18080
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SIGNATURE OF THE PARTIES

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.

3/25/04
Date


Respondent's signature

JAMES MICHAEL V. FITZPATRICK
Print name

Date

Respondent's Counsel's signature

Print name

3/28/05
Date


Deputy Trial Counsel's signature

PAUL T. O'BRIEN
Print name

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In the Matter of JAMES MICHAEL V. FITZPATRICK	Case number(s): 95-O-18080
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ORDER

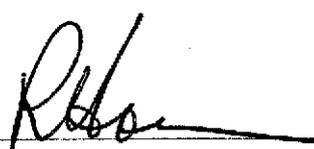
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 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.)**

Date

4/27/05


RICHARD A. HONN

Judge of the State Bar Court

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES MICHAEL V. FITZPATRICK

CASE NUMBER(S): 95-O-18080

STATEMENT OF FACTS.

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

1. In or about 1994, Respondent was employed by the San Diego County District Attorney as a deputy district attorney. Between 1989 and 1994, Respondent had worked in the gang unit of the District Attorney's office under the supervision of Deputy District Attorney Keith Burt. In 1994, Burt was heavily occupied with another criminal prosecution and Respondent was largely responsible for the day-to-day operations of the gang unit. At that time, Respondent was assigned the prosecution of a criminal matter entitled *People v. Jemal Kasim*, San Diego Superior Court, case no. CR 1439651 ("the Kasim matter"). The Kasim matter involved an assault on Abdul Mustafa in October 1989 by Mathew Miner ("Miner"), acting in concert with Enrique Gonzalez ("Gonzalez"), Simon Jara ("Jara"), and Elliot Limbrick. These individuals were members of a street gang known as the "Southside Mob". The three individuals were recruited to assault Mustafa by Jemal Kasim ("Kasim").

2. Between 1989 and 1992, Gonzalez and Jara had numerous contacts with law enforcement officers, chiefly National City Police detective Mark Musgrove ("Musgrove"). During this time period, both Gonzalez and Jara provided Musgrove with information regarding various gang activities. In 1990, Gonzalez was convicted on a charge of petty theft. Gonzalez violated the terms of his probation in that matter and, on July 3, 1990, his probation was revoked and reinstated, and modified to require 92 hours of volunteer work with the National City Police Department. Gonzalez satisfied that condition of his probation by spending time discussing gang activities with Musgrove. Neither Gonzalez nor Jara,

however, were registered informants with the National City Police Department or the Special Operations Division of the San Diego County District Attorney's Office (the unit in that office responsible for maintaining informant files). In 1991, Musgrove arrested Gonzalez for attempted murder. Immediately thereafter, Respondent's supervisor ordered that the investigation in the Kasim matter be suspended until the new criminal charges against Gonzalez were resolved. Respondent's supervisor further ordered Respondent to have no involvement whatever with Gonzalez' new criminal case, and directed a separate unit of the District Attorney's office to prosecute the new case against Gonzalez. In that matter, Gonzalez pled guilty to the lesser charge of assault with a deadly weapon (in 1992).¹ Gonzalez was not sentenced to state prison. In or about this time, Musgrove also wrote a letter of recommendation to assist Gonzalez in finding employment.

3. Gonzalez and Jara were both called as witnesses for the People at the preliminary hearing and trial in the Kasim matter. While the Kasim matter was pending, apparently on the recommendation of the Assistant District Attorney, Gonzalez and Jara were not arrested for their respective roles in the assault on Mustafa. Gonzalez and Jara were not charged in the assault until July 1996.

4. On March 7, 1994, Kasim's trial counsel, John Cotsirilos ("Cotsirilos"), made an informal discovery request of Respondent seeking all information regarding any promises, inducements, threats and benefits regarding Gonzalez in his role as a police informant. On March 21, 1994, Respondent informed Cotsirilos in writing that all discoverable information had been provided to the defense. On April 11, 1994, Cotsirilos filed a formal discovery motion seeking the same information.

5. On June 13, 1994, before the presentation of evidence, Cotsirilos told the court that he did not believe that the defense had been provided with complete discovery regarding Gonzalez and Jara.

¹Musgrove attended Gonzalez' sentencing hearing at the request of the Deputy District Attorney who was prosecuting the new matter in the event the judge had any questions about Gonzalez. In court, Musgrove was not asked any questions by anyone, and made no statements on Gonzalez' behalf.

Respondent represented to the court and counsel that Gonzalez and Jara were not police informants,² and had not received any promises or benefits for their testimony. On that same day, an *in camera* hearing was held on the discovery motion, immediately prior to commencement of trial in the Kasim matter.³ At that time, Respondent represented to Cotsirilos and the court that Gonzalez was not a police informant and that Gonzalez and Jara had not received any promises or benefits for their testimony. At no time did Respondent disclose to Cotsirilos or to the court that Gonzalez had discharged his community service in the theft case by providing information to Musgrove, that Musgrove had assisted Gonzalez at his sentencing hearing on the assault with a deadly weapon charge and that Musgrove had written a letter of reference on Gonzalez' behalf. Respondent further represented that Gonzalez' contacts with Musgrove were informal and did not amount to informant status.⁴

6. On June 22, 1994, another *in camera* hearing was held in the Kasim matter on discovery issues. At the hearing, Cotsirilos informed the court that his research had revealed Musgrove's attendance at Gonzalez' sentencing hearing in the assault with a deadly weapon matter and Gonzalez' discharge of his community service in the petty theft matter by holding discussions with Musgrove. After the conclusion of this hearing, Respondent was ordered by the court to disclose all information relating to Gonzalez' and Jara's cooperation with any law enforcement agency and all benefits received

²Insofar as neither was listed on the previously mentioned lists maintained by the National City Police Department and the San Diego District Attorney's Special Operations Division, that was technically a "true" statement.

³Respondent requested the *in camera* hearing at the outset, and informed the judge of potential, outstanding discovery issues that would require the ruling(s) from the court.

⁴Respondent had Detective Musgrove present during the *in camera* hearing to personally describe for the court the extent of his relationship with Gonzalez and Jara, and to answer any questions that the court might have. During the *in camera* hearing, Respondent took the position that, based upon his knowledge and Detective Musgrove's representations, Gonzalez' and Jara's contacts with Musgrove were informal and did not amount to informant status. During the *in camera* hearing, however, Musgrove neglected to inform the court and Respondent that Gonzalez had discharged his community service in the theft case in part by spending time discussing his gang activities with him, that he (Musgrove) attended Gonzalez' sentencing hearing for the assault with a deadly weapon charge at the request of the Deputy District Attorney who was prosecuting the case, and that he (Musgrove) wrote a letter of recommendation to assist Gonzalez in finding employment.

by Gonzalez and Jara as a result of their status as informants.

7. In 1994, Gonzalez was subject to deportation proceedings because of the 1992 assault with a deadly weapon conviction. On June 23, 1994, Respondent wrote a letter to Gonzalez' immigration attorney. In that letter, Respondent stated:

"I expect that the trial will conclude in two weeks. Following that, that the District Attorney will make certain decisions regarding Enrique Gonzalez including decisions which may affect Gonzales's past criminal convictions and decisions about future criminal charges. ¶ Those decisions will not be made by July 13, 1994."

At no time did Respondent provide a copy of, disclose the existence of, or acknowledge the fact that he had written the letter to the defense in the Kasim matter.⁵

8. Respondent, was ordered by the court in the Kasim matter on June 22, 1994, to make full disclosure to the defense of potentially exculpatory evidence, actions within the course of his duty as an attorney.

9. Respondent had a duty to provide potentially exculpatory evidence to the defense in the Kasim matter [*Brady v. Maryland* (1963) 373 U.S. 83, 87; *In Re Ferguson* (1971) 5 Cal. 3d. 525, 531; Penal Code section 1054.1(e)]. That duty included evidence regarding any inducements made to prosecution witnesses for favorable testimony [*People v. Westmoreland* (1976) 58 Cal App.3d 32,45], as well as that of Respondent's intervention in Gonzalez' immigration matter was a benefit to Gonzalez.

10. On June 24, 1994, Gonzalez was called as a witness for the People at the trial for the Kasim matter. In response to Respondent's questions on direct examination, Gonzalez testified that he understood that he would be criminally charged for his conduct in the shooting of Mustafa.

11. On June 27, 1994, Jara was called as a witness for the People at the trial for the Kasim

⁵Respondent learned of the pending immigration matter for the first time on June 23, 1994 through Gonzalez' immigration attorney, and wrote the letter at the request of that attorney so that she could present the letter in open court to the immigration judge.

matter. In response to Respondent's questions on direct examination, Jara testified that he had received no benefits for his testimony.

12. On or about July 8, 1994, Respondent made his closing argument to the jury in the Kasim matter. During his closing argument, Respondent represented that no benefits had been extended to Gonzalez or Jara for the testimony and that Gonzalez and Jara would be prosecuted for their roles in the assault on Mustafa.

13. The jury in the Kasim matter found Kasim guilty of one count of conspiracy to commit aggravated mayhem and one count of aggravated mayhem. Kasim was sentenced to life in prison with the possibility of parole. Following the conviction, Kasim filed a petition for habeas corpus, alleging, *inter alia*, prosecutorial misconduct.

14. On July 13, 1994, Gonzalez was ordered deported. On that same day, Respondent wrote to Gonzalez' immigration counsel, stating:

"The Kasim/Miner trial ended yesterday, July 12, 1994, I expect the District Attorney will now file one or more charges against Enrique Gonzalez for his involvement in an incident which occurred on October 26, 1989. ¶ Those charges may include Conspiracy to Commit Aggravated Mayhem, Attempted Murder and Attempted Mayhem. At this point, it is in our best interest to have Enrique Gonzalez remain in the United States so that he may be prosecuted for these offenses."

At no time did Respondent disclose the pendency of Gonzalez' immigration matter, the existence of the July 13, 1994 letter, or the fact that he had written it, to the defense in the Kasim matter.

15. On October 11, 1994, Respondent agreed to allow Gonzalez to withdraw his plea to the 1992 assault with a deadly weapon conviction and substitute a plea to a lesser included offense and then have the conviction to the lesser included offense expunged.⁶ Following the expungement, Gonzalez'

⁶Respondent acted with the consent and authorization—and at the direction—of his superiors in the San Diego County District Attorney's Office in permitting the pleas withdrawal.

immigration attorney successfully argued against his deportation based on the fact the felony conviction had been expunged. At no time did Respondent disclose these events to the defense in the Kasim matter.

16. On April 24, 1996, the Court of Appeal ordered that an evidentiary hearing be held pursuant to Kasim's petition for writ of habeas corpus regarding the allegations of prosecutorial misconduct.

17. On or about August 7, 1997, based on the findings of the appointed referee, the Court of Appeal reversed Kasim's conviction due to prosecutorial misconduct committed by Respondent, which denied Kasim a fair trial.

CONCLUSIONS OF LAW.

By failing to inquire of Detective Musgrove as to benefits extended to Gonzalez in his prior criminal prosecutions, failing to disclose his intervention in Gonzalez' immigration matter to the defense in the Kasim matter, and failing to disclose his knowledge of those benefits to the defense in the Kasim matter, Respondent violated the court's order and breached his duty to produce potentially exculpatory evidence, all in wilful violation of rule 5-220, Rules of Professional Conduct, and Business and Professions Code section 6103.

By representing that no benefits had been extended to Gonzalez by the prosecution, when in fact a minimally competent inquiry would have shown otherwise, Respondent failed to employ such means as are consistent with truth, in wilful violation of rule 5-200(A), Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(7), was March 21, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 21, 2005, the estimated prosecution costs in this matter are approximately \$2,103.80.

Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Davidson v. State Bar (1976) 17 Cal.3d 570, resulted in a public reproof where a defense attorney concealed information regarding his client's whereabouts.

The Respondent in *DiSabatino v. State Bar* (1980) 27 Cal.3d 159, received a public reproof after he forum-shopped for a bail reduction for his client and did not let the court know he had been turned down by other judges.

In *Olguin v. State Bar*, (1980) 28 Cal.3d 195, Respondent fabricated evidence for use in the State Bar Court, and received a six month actual suspension although he had a record of prior discipline that also involved misrepresentations/acts of moral turpitude.

The Respondent in *Garlow v. State Bar* (1988) 44 Cal.3d 689, received an actual suspension of six months for misrepresentations to the court (in addition to other misconduct), although he had a record of three prior impositions of discipline.

In *Davis v. State Bar* (1983) 33 Cal.3d 231, Respondent received one year actual for multiple acts of misconduct that included wilful deception of a court, and Respondent had a prior record of discipline that demonstrated an ongoing substantial disregard for his clients, and a recurring lack of candor.

In *Arm v. State Bar* (1990) 50 Cal.3d 763, Respondent received 18 months actual suspension for misleading a court and for multiple additional acts of misconduct (including trust fund violations)—Arm had three priors.

In *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, the Respondent

received six months actual after making multiple misrepresentations to the court and altering/fabricating a subpoena and proof of service, in addition to failing to cooperate with the State Bar.

In *People v. Reichman*, 819 P.2d 1035 (Colo. 1991), (a Colorado disciplinary matter), an (elected) District Attorney received a public censure after being found culpable of essentially fabricating a prosecution (filing fictitious charges) in an effort to further a “sting” operation. The attorney aided in a plan to rehabilitate an undercover agent’s cover by filing a false criminal complaint and permitting false statements to be made to a judge who was unaware of the agent’s identity and of the fact that the criminal charges were false.

The Supreme Court in *Vaughn v. State Bar* (citing to *Arden v. State Bar*) held that while the delay in the proceedings does not warrant dismissal, it is a factor to be considered in the disposition: “[T]he pendency of disciplinary proceedings for period exceeding three years is in itself an ordeal warranting mitigation of punishment.”

ADDITIONAL MITIGATING CIRCUMSTANCES.

Continued from page 4. The Office of the Chief Trial Counsel acknowledges that the events or factors included in this stipulation (identified in the form portion of this document at page 4, and more fully described below) as mitigating circumstances have been established by clear and convincing evidence by the Respondent during the investigation of this matter—or are of a nature that would be appropriate for judicial notice were this matter to proceed to a trial. The parties further stipulate that the mitigating factors demonstrate that the public, courts and legal profession would be adequately protected by the recommended disposition, which is a more lenient degree of sanction than is otherwise set forth in the Standards of Attorney Sanctions for Professional Misconduct for the particular acts (and omissions) acknowledged herein.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

(6) Continued. A period of ten years has passed since Respondent's misconduct. The State Bar's investigation and prosecution were delayed by reasons not caused by Respondent (including, *inter alia*, lengthy appeals in the underlying matter and in another criminal case arising out of a criminal prosecution in the San Diego Superior Court in which Respondent was an integral witness, as well as the 1998-2000 funding crisis that brought disciplinary matters to a virtual standstill).

(11) Continued. Shortly after the time of Respondent's misconduct, the State Bar received complaints from various sources, including two complaining witnesses. Both complaining witnesses now believe that Respondent is a person of good character, a valued asset to the legal community in San Diego County, an honest and forthright advocate, and a responsible citizen in the greater community. Respondent, further, has received broad support in responding to the charges in this matter from citizens of San Diego County, including numerous, distinguished members of the bench and bar.

(12) Continued. See narratives associated with mitigation items (6) and (11), immediately above.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 April 27, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed April 27, 2005**

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

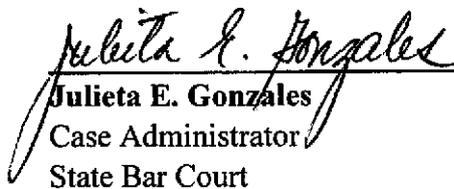
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES M VINCENT FITZPATRICK ESQ
101 W BROADWAY #1950
SAN DIEGO CA 92101**

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

Paul T. O'Brien, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 27, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court