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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206</p> <p>Bar # 94251</p>	<p>Case Number(s): 08-O-10426 08-O-13243 09-O-10190</p> <p>PUBLIC MATTER</p>	<p>For Court use only</p> <p>FILED</p> <p>APR - 4 2011 <i>[Signature]</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Mark S. Roberts P.O. Box 9769 Newport Beach, California 92658 949-566-5916</p> <p>Bar # 92880</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: Mark S. Roberts</p> <p>Bar # 92880</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 May 30, 1980.
- (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 16 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."



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- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court order. (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 [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.
- (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. Respondent failed to render appropriate accounts to his client in Case No. 08-O-13243 and Case No. 08-O-10426.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. In two of these three matters, Respondent significantly failed to perform those services for which he was retained, and delayed responsiveness to client inquiries to such a degree that the clients were compelled to retain replacement counsel to either achieve the original retainer objective or

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retrieve their advanced legal fees, file materials. In the other matter counsel was retained to secure monies borrowed by respondent.

- (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. Respondent was admitted to practice on May 30, 1980, and has no record of prior discipline.
- (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. Since the filing of these charges, Respondent has displayed spontaneous candor and cooperation.
- (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. During the period of time when the alleged misconduct occurred, Respondent's law practice experienced a downturn in productivity and

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generated fees such that it was necessary to layoff staff and force him to assume additional personal responsibility for details of the practice that proved overwhelming. In June of 2007, Respondent moved his office reducing his number of offices from six to one.

- (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. During the period of time when the alleged misconduct occurred, Respondent was experiencing stressors associated with a protracted divorce after a 27 year marriage, ongoing problems involving caring for and custody determination of a child of that same marriage, including serious and lengthy medical problems related to the same child, as well as being primarily responsible for attending to the health and care benefits of his elderly mother, including during her hospice care from May 2006 through August 2007.
- (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:

Respondent was and continues to make himself available to serve in a pro tem capacity in various local courts acting as a hearing officer in a variety of contexts including settlement.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of two 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 must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of six months.

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- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

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

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

No Ethics School recommended. Reason: .

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- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

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In the Matter of: Mark S. Roberts	Case Number(s): 08-O-10426, 08-O-13243 and 09-O-10190
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Robin G. Hietala	\$7,500.00	September 4, 2007
Helen Lettice	\$8,500.00	August 10, 2007

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than the expiration of Respondent's probationary term herein..

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
 - i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
 - i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
- 2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
- 3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

7. Respondent failed to respond to the August 24, 2007 letter. As a result, on or about December 5, 2007, Brad filed a Petition to Compel Trustee to Provide Copy of Trust Instrument against Hietala and Rex, and in or about December 2009, Hietala and Rex were each served with a copy of the petition and summons.

8. In December 2007, Hietala retained new counsel to represent her in the trust matter.

9. On December 20, 2007, Hietala retained attorney Valerie K. deMartino ("deMartino") to represent her in the trust matter.

10. On December 20, 2007, deMartino sent a letter to Respondent by telefax informing him that she had been retained by Hietala. In the letter, deMartino requested that Respondent have Hietala's file ready for pick up the next day because the documents in the file were needed to respond to the petition.

11. On December 28, 2007, Respondent contacted deMartino by telefax. Respondent stated that he had only received the December 20, 2007 telefax that day because of problems with his fax machine. Respondent stated that Hietala's file was ready for pick up that day; that an accounting was underway; and that after it was completed, it would be forwarded with a check for the balance of fees.

12. On December 28, 2007, deMartino's office confirmed receipt of Respondent's fax and confirmed that Hietala would pick up the file from Respondent on Monday, December 31, 2007.

13. On December 31, 2007, Respondent sent a letter to deMartino and Hietala regarding the trust matter. In the December 31, 2007 letter Respondent told them that Hietala's file was not ready for pickup, and he would overnight the file on January 2, 2008.

14. On December 31, 2007, deMartino emailed Respondent to remind him to overnight the trust documents. In the email, deMartino noted that they had to respond to the petition, and the hearing in the trust matter was set for January 16, 2008.

15. As of January 10, 2008, Respondent still had not turned over Hietala's file. Therefore, on January 10, 2008, deMartino sent Respondent a letter regarding his failure to provide the documents. Once again, deMartino reminded Respondent that there was a hearing coming up in the trust matter and asked Respondent when they would receive the file.

16. On January 24, 2008, eight days after the scheduled hearing in the trust matter, Respondent sent Hietala's client file to deMartino.

17. On February 19, 2008, deMartino sent a letter to Respondent requesting an itemized statement for the work he performed for Hietala and requested the remaining balance of Hietala's retainer immediately. Respondent received the letter but failed to provide an accounting and a refund.

18. Respondent did not provide any services of value to Hietala and Rex. Respondent did not earn the \$7,500 fee that Hietala paid in advance.

19. To date, Respondent has not refunded any portion of the unearned fees to Hietala.

CONCLUSIONS OF LAW:

20. By failing to meet with Hietala and by failing to return Hietala's telephone calls seeking status updates on the trust matter, Respondent failed to respond promptly to reasonable status inquiries of a client in willful violation of Business and Professions Code section 6068(m).

21. By failing to respond to Brad's letter of August 24, 2007 as discussed at the September 4, 2007 meeting and by failing to provide any services of value to Hietala and Rex, Respondent intentionally, willfully and recklessly failed to perform with competence in violation of Rules of Professional Conduct, rule 3-110(A).

22. By not promptly returning the client file to Hietala despite requests from Hietala and requests from deMartino on Hietala's behalf, Respondent failed to release promptly, upon termination of employment, to his client, at the request of the client, all client papers and property in violation of Rules of Professional Conduct, rule 3-700(D)(1).

23. By failing to render an appropriate account to Hietala regarding the \$7,500 advanced fees she had paid him, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

24. By failing to refund upon termination any portion of the \$7,500 in advanced fees received from Hietala, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 08-O-13243 (Complainant: Lettice)

FACTS:

25. On July 26, 2007, Helen Lettice ("Lettice") employed Respondent to assist her in the administration of her mother's trust. On July 26, 2007, Lettice paid Respondent \$8,500 in advanced fees for his legal services.
26. After hiring Respondent for the administration of her mother's trust, Lettice learned that she only needed to obtain her mother's death certificate to transfer her mother's assets into her name, and Respondent's services were unnecessary.
27. On August 10, 2007, Lettice spoke to Respondent by telephone and requested a refund of the advanced fees. In response, Respondent told Lettice he had no money.
28. On September 8, 2007, Lettice emailed Respondent requesting a refund from Respondent. On or about September 10, 2007, Respondent responded by email asking Lettice to rethink terminating his services.
29. On October 3, 2007, Lettice met with Respondent at his office and requested an accounting and refund. Respondent told Lettice that his computer was down and could not comply with her request. During the October 3, 2007 meeting with Respondent, Lettice agreed to accept \$4,250 or 50% of the fees she had paid Respondent. However, Respondent did not refund the \$4,250 or any sum to Lettice.
30. On May 8, 2008, after Lettice was unable to resolve her issues with Respondent, she hired attorney Jay Stoegbauer ("Stoegbauer") to represent her.
31. On May 9, 2008, Stoegbauer informed Respondent that he had been retained by Lettice to assist in retrieving her file and the \$8,500 in unearned fees from Respondent.
32. On May 19, 2008, Respondent responded to Stoegbauer's letter and represented that he would provide all "appropriate documentation," an accounting and a check for unearned fees to Stoegbauer no later than May 27, 2008. Respondent failed to provide the documentation, the accounting and the refund by May 27, 2008 or at any time.
33. Respondent did not provide any services of value to Lettice. Respondent did not earn any of the \$8,500 in advanced fees paid by Lettice.

34. To date, Respondent has not refunded any portion of the unearned fees to Lettice.

CONCLUSIONS OF LAW:

35. By failing to render an appropriate account to Lettice regarding the \$8,500 advanced fees she had paid him, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession willful violation of Rules of Professional Conduct, rule 4-100(B)(3).

36. By failing to refund upon termination of his employment any portion of \$8,500 in advanced fees Respondent received from Lettice, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 09-O-10190 (Complainant: Daily)

FACTS:

37. In February 2005, Phyllis Daily ("Daily") hired Respondent to assist her in the administration of Daily's trusts after the recent death of Daily's husband, Robert. Respondent also agreed to prepare a charitable trust for Daily. In February 2005, Daily paid Respondent \$10,000 for his legal services.

38. Respondent continued to provide legal services to Daily through, at least, June 2006.

39. On July 20, 2006, Respondent sent Daily an email requesting a "loan" from Daily in the amount of \$40,000. As collateral for loan, Respondent offered his interest in funds from the current sale of a residence he co-owned with a friend. Specifically, in the July 20, 2006 email, Respondent proposed paying interest only at 10% from "now until the funds are distributed from the sale of Greenhaven. ... When funds are distributed, I'll pay \$20,000." Respondent also offered the cash surrendered value of his life insurance policy.

40. On July 23, 2006, Daily loaned \$25,000 to Respondent.

41. Prior to obtaining a loan from Daily, Respondent failed to fully disclose the terms of the loan in writing to Daily. Respondent did not provide any written security for the loan despite his oral

promise to secure the loan with real property and an insurance policy. Respondent did not sign a promissory note on Daily's behalf.

42. Prior to entering into the loan with Daily, Respondent did not advise Daily in writing that she may seek the advice of independent counsel of her choosing.

43. Prior to obtaining a loan from Daily, Daily did not consent in writing to the terms of the transaction.

44. Respondent failed to repay the \$25,000 loan to Daily despite multiple requests to do so.

45. In March 2007, Daily employed attorney Jorge Gonzales to obtain repayment of the \$25,000.

46. To date, Respondent has only repaid \$1,062 of the \$25,000 loan.

CONCLUSIONS OF LAW:

47. By borrowing \$25,000 from Daily without assuring that the terms of the transaction were fair, were fully disclosed to Daily and were transmitted in writing Daily and by borrowing \$25,000 from Daily without her written consent, Respondent knowingly entered into a business transaction with a client without assuring that the terms of the transaction were fair, were fully disclosed to the client, and were transmitted in writing to the client in a manner which should have been understood to the client in willful violation of Rules of Professional Conduct, rule 3-300(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 21, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.6(a) provides that, "The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Standard 1.6(b)(i) provides for a greater degree of discipline than the appropriate sanction where aggravating circumstances are found to surround the complained of misconduct. The fact that Respondent is alleged to have entered into a personal relationship with his client Daily in order to facilitate the subject personal loan, constitutes significant aggravation. Additionally, in each of these three matters the clients were compelled to retain replacement/successor counsel to achieve either their original objectives or responsiveness from Respondent.

Standard 2.2(b) provides for at least a three month actual suspension irrespective of mitigating circumstances for a violation of rule 4-100.

Standard 2.4(a) provides for disbarment where culpability is found for a pattern of willfully failing to perform services demonstrating abandonment of the causes in which he was retained.

Standard 2.6 provides for disbarment or suspension depending upon the gravity of the offense or harm where culpability for violation of section 6068(m) is found.

Standard 2.8 provides for suspension where culpability is found for a willful violation of rule 3-300, unless the harm to the client is minimal, which in the Daily matter is not the case.

The Standards should be followed whenever possible. *In re Silverton* (2005) 36 Cal. 4th 81, 92. In imposing discipline, the court should consider the appropriate discipline in light of the standards, but in so doing the court may consider any ground that may form a basis for an exception to application of the standards. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. Inasmuch as the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. *Bates v. State Bar* (1990) 51 Cal. 3rd 1056, 1061.

In consideration of the facts and circumstances surrounding Respondent's misconduct, and the aggravating and mitigating circumstances present, the parties submit that the intent and goals of the Standards are met in this matter with the imposition of a six month actual suspension, two year stayed suspension and two year probation.

DISMISSALS.

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>
08-O-13243	Eight	Rules of Professional Conduct, rule 2-100(A)
09-O-10190	Ten	Business and Professions Code section 6106
09-O-10190	Eleven	Business and Professions Code section 6068(i)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 21, 2011, the prosecution costs in this matter are approximately \$6,283.00. 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.

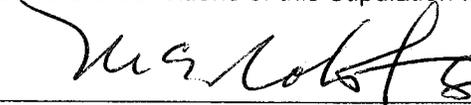
* RESPONDENT REQUESTS AN ITEMIZED
BREAKDOWN OF COSTS. MSR 3/24/11
10

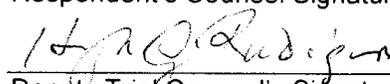
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In the Matter of: Mark S. Roberts	Case number(s): 08-O-10426, 08-O-13243 and 09-O-10190
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SIGNATURE OF THE PARTIES

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.

3/24/2011  Mark S. Roberts
Date Respondent's Signature Print Name

March 24 '11  Hugh G. Radigan
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: Mark S. Roberts	Case Number(s): 08-O-10426, 08-O-13243 and 09-O-10190
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ACTUAL SUSPENSION ORDER

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

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

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

3/28/11
Date



Judge of the State Bar Court

DONALD F. MILES

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 <select city>, on April 4, 2011, 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:

MARK SCOTT ROBERTS
ROBERTS LAW FIRM
PO BOX 9769
NEWPORT BEACH, CA 92658

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Hugh Gerard Radigan, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 4, 2011.



Cristina Potter
Case Administrator
State Bar Court