ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar	Case Number (s)	(for Court's use)
Kimberly J. Belvedere State Bar of California 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1162 Bar # 251334	08-O-10896 08-O-14024 09-O-10811 09-O-15003	FILED FEB 16 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
In Pro Per Respondent Michael Ian Berry Law Offices of Michael I. Berry 5777 W Century Blvd Ste 925 Los Angeles, CA 90045 (213)272-2331 Bar # 141993	Submitted to: **Assigned Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter Of: Michael Ian Berry Bar # 141993 A Member of the State Bar of California (Respondent)	**ACTUAL SUSPENSION** ☐ 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 11, 1989.

(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 284, Rules of Procedure.

☒ costs to be paid in equal amounts prior to February 1 for the following membership years: Costs to be paid in equal amounts prior to February 1 for the following three billing cycles subsequent to the effective date of the Supreme Court order.
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"

☐ 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 02-O-11413

(b) ☒ Date prior discipline effective June 18, 2003

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: rule 3-110(A) [Failure to Perform] and 3-700(D)(1) [Failure to Release Client File] of the Rules of Procedure of the State Bar of California

(d) ☒ Degree of prior discipline private reproval with public disclosure; one year probation with conditions

(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.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment at page 13.

(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. See attachment at pages 13-14.

(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 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) ☐ **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 attachment at page 14.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of 3 (three) 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 3 (three) 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 90 (ninety) 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 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 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:

(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:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☒ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation 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 321(a)(1) & (c), 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:**

In the Matter of: MICHAEL IAN BERRY, No. 141993	Case Number(s): 08-O-10896; 08-O-14024; 09-O-10811; 09-O-15003

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
Dennis Dent	$650.00	July 18, 2008
Martha Mota	$18,500.00	November 2, 2008
Sixx Carter	$500.00	July 1, 2006
Ninth Circuit Court of Appeals	$2,000	August 31, 2010

☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 30 months after the effective date of the Supreme Court Order approving this stipulation..

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 reproval), 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.

ATTACHMENT TO STIPULATION RE: FACTS; CONCLUSIONS OF LAW, AND DISPOSITION

In the Matter of: MICHAEL IAN BERRY, Bar No. 141993

Case Nos.: 08-O-10896; 08-O-14024; 09-O-10811; 09-O-15003

WAIVER OF VARIANCE

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on November 3, 2010 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS AND CONCLUSIONS OF LAW

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

Case No. 08-O-10896 (Josephine Tutt matter)

Statement of Facts

1. Respondent filed a complaint in Los Angeles County Superior Court (*Josephine Tutt v. Dennis Dent* [Case No. BC 376904]) on August 31, 2007. Respondent was the only counsel of record.

2. On March 27, 2008, the Superior Court dismissed *Tutt v. Dent* due to failure to prosecute.

3. On or about May 8, 2008, Respondent filed a motion to set aside the dismissal on behalf of Tutt and attached a declaration to the motion stating that the failure to prosecute was caused by Respondent's mistake, surprise or excusable neglect. In his declaration, Respondent claimed that the file was misplaced due to a relocation of his law practice, as well as confusion created by the assignment of two different case numbers to the matter by the court's file clerk.

4. On or about June 18, 2008, the court granted Tutt's motion and set aside the dismissal, and sanctioned Respondent for his role in the failure to prosecute. The court admonished Respondent for his misstatement to the court that the file clerk created confusion by the assignment of two different case numbers to the matter, as it was Respondent who actually filed two separate complaints on the same day resulting in the dual issuance of case numbers. The court ordered Respondent to pay $650 to the defendant, Dent, within 30 days. Respondent had notice of the order.

5. To date Respondent has not paid $650 to Dent.

Conclusions of Law

6. By not paying $650 to Dent within 30 days of June 18, 2008, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear.

Case No. 08-O-14024 (Ana Gonzalez matter)

Statement of Facts

7. In December 2005, Ana Gonzalez hired Respondent to represent her minor daughter, Tatiana Ramirez, in a civil matter against the Los Angeles Unified School District ("LAUSD").

8. On May 15 2006, Respondent delivered a claim for damages to LAUSD as required by California Government code section 910. The claim was returned to plaintiff as defective, noting that it did not contain a time or location of the alleged incident. Respondent corrected the defects, and resubmitted the claim to LAUSD on June 28, 2006. The claim was rejected by LAUSD on November 14, 2006.

9. From on or about November 14, 2006 through on or about May 16, 2007, Respondent took no steps to advance Ramirez's claim.

10. On May 16, 2007, Respondent filed a complaint on behalf of Ramirez in Los Angeles County Superior Court (Case No. BC371251). The statute of limitations had run on Ramirez's claim, however, on May 15, 2007.

11. On October 18, 2007, defendant LAUSD filed a general demurrer alleging that the complaint failed to comply with the Tort Claims Act, because Respondent's filing of the complaint on May 16, 2007 was beyond the six-month statute of limitations set in Govt. Code section 945.6. A hearing on the demurrer was set for November 21, 2007. Respondent received notice of the hearing.

12. On November 21, 2007, the court sustained defendant's demurrer with leave to amend. Respondent did not appear at the hearing. Respondent received notice of the court's ruling. Thereafter, Respondent took no action to amend plaintiff's complaint.

13. On January 8, 2008, defendant filed a motion to dismiss the complaint based on plaintiff's failure to amend. Respondent received notice of the motion and of the hearing on the motion, which was set for February 13, 2008. Respondent did not notify Ramirez or Gonzalez of the motion. Respondent did not oppose the motion, and did not appear at the February 13, 2008 hearing.

14. On February 13, 2008, the court dismissed plaintiff's case with prejudice based on plaintiff's failure to amend the complaint and plaintiff's non-opposition to defendant's motion to dismiss. Respondent received notice of the dismissal.

15. Between February 15, 2008 and August 6, 2008, Respondent did not notify Ramirez or Gonzalez of the dismissal of Ramirez's complaint.

16. On August 6, 2008, Ramirez called Respondent on the telephone to inquire about her case. Respondent told Ramirez that her case had been "dropped." At this time, Gonzalez also terminated Respondent's employment and asked Respondent for Ramirez's client file. Respondent agreed to return the file within a few days.

17. On August 7, 2008, Gonzalez faxed Respondent a demand for Ramirez's file. Gonzalez also e-mailed and left voice messages for Respondent requesting Ramirez's client file. On August 22, 2008, Gonzalez sent a second fax requesting the return of her daughter's client file.

18. To date, Respondent has not returned Ramirez's client file to her.

Conclusions of Law

19. By performing no legal work of value on T.'s behalf after he delivered T.'s the claim for damages to LAUSD; by filing the complaint one day beyond the statute of limitations in violation of the Tort Claims Act; by failing to amend the complaint following the court's sustaining of defendant's demurrer with leave to amend; and by failing to take any steps to oppose defendant's Motion to Dismiss plaintiff's complaint, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.

20. By not informing Ramirez or Gonzalez that the statute of limitations was running or had run on her claim against LAUSD and by not informing Ramirez or Gonzalez that the court dismissed the complaint with prejudice, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of section 6068(m) of the Business and Professions Code.

21. By not providing Ramirez with her client files, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

Case No. 09-O-10811 (Sixx Carter matter)

Statement of Facts

22. On June 6, 2006, Sixx Carter filed a pro per Petition for Nullity of Marriage (annulment) in Los Angeles County Superior Court (*Carter v. Daniels*, Case No. BD447557).

23. In July 2006, Sixx Carter employed Respondent to represent her, and paid Respondent $500 as an advance fee for his legal services.

24. On September 29, 2006, Respondent substituted into *Carter v. Daniels.*

25. Between July 2006 and November 2008, Respondent suggested to Carter that she waive the preliminary declaration of disclosure in *Carter v. Daniels*. The preliminary declaration of disclosure is non-waivable in an annulment.

26. Between July 2006 and November 2008, Respondent performed no work on *Carter v. Daniels* and abandoned Carter's annulment. As a result, Respondent did not earn any of the advance fees that Carter paid him.

27. To date, Respondent has not refunded any money to Carter.

28. Between in or about July 2006 and in or about November 2008, Carter contacted Respondent repeatedly to inquire about the status of her case. Respondent repeatedly failed to respond to Carter's attempts to contact him.

29. In June 2010, Carter hired new counsel, thereby terminating Respondent's employment. Respondent was notified by Carter's new counsel that his employment had been terminated. Carter's new counsel called Respondent on at least two occasions and requested Carter's client file. Carter's new counsel also sent a letter to Respondent requesting Carter's client file. To date, Respondent has not returned Carter's client file.

Conclusions of Law

30. By failing to complete Carter's annulment or otherwise do any legal work of value from July 2006 to June 2010, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence violation of rule 3-110(A) of the Rules of Professional Conduct.

31. By not providing Carter with her client files, Respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

32. By not refunding any of the advance fees that Carter paid him, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 09-O-15003 (Eduardo Mota matter)

Statement of Facts

33. In October 2008, Eduardo Mota ("Mota") was convicted and sentenced to serve a 120 month prison term in *United States v. Eduardo Robles Mota*, Case No. CR 07-1244-PSG, United States District Court, Central District of California ("*U.S. v. Mota*"). Mota began serving his prison term immediately upon sentencing.

34. On October 15, 2008, Mota's trial attorney filed a notice of appeal in *United States v. Mota*, Case No. CA08-50451 ("Mota's appellate case") in the Ninth Circuit Court of Appeals ("Court of Appeals").

35. On October 16, 2008, the Court of Appeals filed an Order of Time Schedules in Mota's appellate case. The Court of Appeals ordered, among other things, Mota to file his opening brief by February 17, 2009.

36. On November 2, 2008, Martha Mota ("Martha") hired Respondent to represent Mota, her brother, in Mota's appellate case. Mota authorized Respondent to communicate with Martha regarding the status of Mota's appellate case.

37. Respondent agreed that he would represent Mota on appeal and charged Mota $25,000 to represent him. Respondent agreed to accept periodic payments for his legal fees. Thereafter, Respondent received periodic payments totaling $18,000 for his legal work on Mota's appeal.

38. On March 18, 2009, Respondent filed a substitution of counsel in Mota's appellate case.

39. On March 18, 2009, Respondent filed a motion in the Court of Appeals requesting more time to file Mota's opening brief. The Court of Appeals granted Respondent's motion, and ordered Mota to file the opening brief by June 10, 2009. Respondent received notice of the court's ruling on his motion.

40. Respondent never filed Mota's opening brief and did no further work on Mota's appellate case.

41. Beginning in July of 2009, Martha sent multiple requests for an update as to the status of Mota's appellate case, including at least two certified letters to Respondent. Respondent never provided Martha or Mota with a status update on Mota's appellate case.

42. On January 15, 2010, the Court of Appeals, sua sponte, extended the deadline for Respondent to file Mota's opening brief until January 29, 2010. Respondent received notice of the court's order. Respondent did not file the Opening Brief.

43. On February 18, 2010, the Court of Appeals found that Respondent had not filed the opening brief in Mota's appellate case, relieved Respondent as Mota's counsel, and issued an Order to Show Cause ("OSC") requiring Respondent to explain, within 21 days, why the court should not impose sanctions on him. Respondent received notice of the court's ruling.

44. On August 10, 2010, the Court of Appeals, finding that Respondent had not responded to the OSC, imposed a $2,000 sanction on Respondent for failing to comply with the court's order. The court ordered Respondent to pay the sanction within 21 days. Respondent received notice of the court's order. To date, Respondent has not paid the sanctions to the Court of Appeals.

45. Respondent never notified the State Bar of the $2,000 in sanctions that he was ordered to pay by the Court of Appeals.

46. After learning from the Court of Appeals that Respondent failed to file the opening brief, Mota fired Respondent and demanded a refund of the $18,500 that had been paid to Respondent as advanced fees for his work on Mota's appellate case.

47. To date, Respondent has not refunded any money to Mota.

Conclusions of Law

48. By waiting four months to substitute into Mota's case, never filing the opening brief in Mota's appellate matter, and not doing any legal work of value to Mota, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

49. By failing to refund the advance fees he received to represent Mota on appeal after Respondent and failing to otherwise do any legal work that was of any value to Mota, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

50. By failing to pay the $2,000 sanction to the Court of Appeals, Respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103 of the Business and Professions Code.

51. By not reporting the sanction issued against him by the Court of Appeals to the California State Bar, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent, in willful violation of section 6068(o) of the Business and Professions Code.

AGGRAVATING CIRCUMSTANCES

Multiple acts of wrongdoing/pattern of misconduct [Standard 1.2(b)(ii)]: There are several separate client matters involved here, each of which involves at least two or more instances of misconduct.

Significant harm to the client, public, or administration of justice [Standard 1.2(b)(iv)]. Respondent's misconduct resulted in the Gonzalez civil case being dismissed for failing to file the case before the expiration of the statute of limitations. Respondent's misconduct also resulted in the abandonment of the annulment in the Carter matter, which caused Carter to have to obtain new counsel and incur further legal expenses in order to pursue her matter to conclusion. In the Mota matter, Respondent failed to file the

Opening Brief on appeal as he was hired to do, and Respondent's failure to return approximately $18,500 in unearned fees has also significantly impaired Mota's ability to conduct additional investigation and retain private counsel to pursue his criminal appeal. Respondent's conduct in each of the above-referenced matters, in addition to causing significant harm to the clients, also caused harm to the administration of justice to the extent that his failures resulted in an undue consumption of the court's time by extending the litigation process.

ADDITIONAL MITIGATING CIRCUMSTANCES

Candor/Cooperation [Standard 1.2(e)(v)]: Respondent's willingness to admit the underlying allegations and enter into a stipulation, thereby saving the State Bar further time and expenditure in pursuing this matter, evidences a level of cooperation that is entitled to mitigation.

Scaling back of law practice. Respondent reports that, at the time of his misconduct, he was attempting to expand his predominantly criminal defense practice to include civil matters. Respondent was sharing office space and noticed that some of his case-related mail was not being left for him at the designated drop-off location until weeks after delivery. After trying to rectify the problem to no avail, Respondent made arrangements to move to another location. Respondent admits that he experienced difficulty in the handling the day to day management of the civil matters during the time that he was moving his law practice, but reports that he has now cut back his civil litigation practice and returned to handling a manageable caseload of predominantly criminal defense matters.

AUTHORITIES SUPPORTING DISCIPLINE

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct sets forth that purpose as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." The California Supreme Court has dictated that the assessment of what constitutes appropriate discipline should begin with the Standards, which are entitled to great weight. (*In re Silverton* (2006) 36 Cal.4th 81, 92). The Standards provide a presumptively appropriate level of discipline (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607) and adherance to the Standards promotes the consistent and uniform application of disciplinary measures (*In re Morse*, (1995) 11 Cal.4th 184, 206).

Standard 1.6(a) provides that where two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by the Standards, the sanctions imposed shall be the most severe of the different applicable sanctions.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.4(b) provides that if there is a pattern of willfully failing to perform services, then disbarment should be the appropriate disposition. For all other matters where a pattern is not shown, the appropriate disposition should be a reproval or suspension depending on the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability for a violation of any sections 6068 and 6103 of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense, or harm, if any, to the victim with due regard to the purposes of sanctions for professional misconduct as delineated in Standard 1.3.

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code or of a willful violation of any Rule of Professional Conduct not otherwise specified shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

PENDING PROCEEDINGS

The disclosure date referred to on page 2, paragraph A(7), was January 24, 2011.

ESTIMATED COSTS OF PROCEEDINGS TO DATE

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that, as of January 13, 2011, the prosecution costs in this matter are estimated to be $3,269.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter will increase.

/// END OF ATTACHMENT ///

In the Matter of:	Case number(s):
MICHAEL IAN BERRY, No. 141993	08-O-10896; 08-O-14024; 09-O-10811; 09-O-15003

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.

Date	Respondent's Signature	Print Name
02/04/2011		MICHAEL BERRY
02/04/2011		MICHAEL BERRY
2/4/11		Kimberly J. Belvedere

Date	Respondent's Counsel Signature	Print Name

Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: MICHAEL IAN BERRY, No. 141993	Case Number(s): 08-O-10896; 08-O-14024; 09-O-10811; 09-O-15003

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 following is added as a condition of probation: "Within 30 calendar days after the effective date of the Supreme Court's Order in this matter, Respondent must present proof to the Office of Probation that he has returned (1) his file in the *Ramirez* matter to Ana Gonzalez, or her representative; and (2) his file in the *Carter* annulment matter to Sixx Carter, or her representative."

Page 11: Paragraph 19 is modified to read: "By performing no legal work of value on T.'s behalf after he delivered T.'s claim for damages to LAUSD; and by filing the complaint one day beyond the statute of limitations, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct."

Page 13: Paragraph 48 is modified to read: "By never filing the opening brief in Mota's appellate matter, and not doing any legal work of value to Mota, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the Rules of Professional Conduct."

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.)**

2/16/2011
Date

Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 16, 2011, I deposited a true copy of the following document(s):

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

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:

MICHAEL I. BERRY
LAW OFFICES OF MICHAEL I BERRY
5777 W CENTURY BLVD STE 925
LOS ANGELES, CA 90045

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

KIMBERLY BELVEDERE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 16, 2011.

Tammy Cleaver
Case Administrator
State Bar Court