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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

ORIGINAL

Counsel For The State Bar	Case Number(s):	For Court use only
Adriana Burger Deputy Trial Counsel State Bar of Calfiornia 1149 S. Hill Street Los Angeles, CA 90015 213-765-1229 Bar # 92534	11-O-15120 , 11-O-15204, 11-O-18131, 12-O-10452 & 12-O-12555	**PUBLIC MATTER** FILED JUN 21 2012 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent David Cameron Carr 530 B Street Suite 1410 San Diego, CA 92101 Bar # 124590	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: Thomas James Bayard Bar # 226247 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted August 13, 2003.

(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 17 pages, not including the order.

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(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

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

- ☒ 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: (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 10-O-07850, et.al. (seven matters total)

(b) ☒ Date prior discipline effective 1/11/2012

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: 3-110(A), 3-700(D)(1) and 3-700(D)(2) of the Rules of Professional Conduct and Business and Professions Code Sections 6068(i), 6104,and 6068(m).

(d) ☒ Degree of prior discipline Two years suspension, stayed, four years of probation with conditions including 60 days of actual suspension.

(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. Please see Attachment Section titiled "Aggravating Circumstances-Harm on page 5.

(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. Please see pages 6 and 7 of the Attachment entitled Authorities Supporting Discipline.

(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. Please see Attachement Section titled "Mitigating Circumstances--Emotional/Physical Difficulties" on page 5 of the attachment.

(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:

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 must be placed on probation for a period of four (4) 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 sixty (60) 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 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: Respondent was ordered to complete State Bar Ethics School in connection with his prior discipline, Supreme Court Order S196823 which became effective on January 11, 2012..

(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 5.162(A) & (E), Rules of Procedure.**

☒ No MPRE recommended. Reason: Respondent was ordered to complete and pass the MPRE in connection with his prior discipline, Supreme Court Order S196823 which became effective on January 11, 2012.

(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: Thomas James Bayard	Case Number(s): 11-0-15120' 11-0-15204, 11-0-18131, 12-0-10452 & 12-0-12555

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
Eloise Lee	$8,400.00	November 9, 2009
Vesta M. Waltower	$1,500.00	August 9, 2010
Mary Medina	$9,500.00	March 1, 2010

☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than one (1) year from the effective date of the Supreme Court order in this matter.

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: Thomas James Bayard

CASE NUMBER(S): 11-O-15120 , 11-O-15204, 11-O-18131, 12-O-10452 & 12-O-12555

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. 11-O-15120 (Mildred Perez)

FACTS:

1. On April 13, 2010, Mildred and Lolito Perez ("Perez") employed Respondent's law firm Alessi & Bayard to file a Chapter 7 Bankruptcy with the United States Bankruptcy Court ("Court"). Perez paid the firm $1,829. Respondent delegated the work on the Perez bankruptcy to Eve Holland, an associate attorney working part-time for the firm. On April 19, 2010, Respondent filed the Chapter 7 Petition ("Petition") on behalf of Perez with the Court. On April 19, 2010, the Court properly served on Respondent a deficiency notice listing nine problems with the petition that were to be resolved no later than April 28, 2010 and one problem that was to be resolved no later than May 12, 2010. Respondent received the deficiency notice. On April 22, 2010, the Court notified Respondent and Perez by mail of all the problems with the Petition and that the Court would dismiss the Petition on May 13, 2010, unless the problems with the Petition were corrected. Respondent received the notice.

2. At about the same time, both of Ms. Holland's parents passed away. Respondent attempted to draft and file a revised petition correcting the problems with the Petition but encountered difficulty because he could not locate the Perez file. Respondent contacted Perez and asked that the missing documentation be updated for resubmission but Perez did not understand or was unable to assist Respondent. A revised Petition was not filed and the Court dismissed the Petition on May 13, 2010. On May 14, 2010, Respondent contacted Perez and requested that she pay Respondent an additional $299 for the filing fee so that he could re-file Perez's Petition with the Court. Perez paid the $299 on the same date. The new Petition was never filed. On July 9, 2010, the Court closed Perez's Petition.

3. Mr. and Mrs. Perez filed a small claims court action against Respondent and Alessi & Bayard. On or about January 12, 2011, a judgment was entered against Respondent and Alessi & Bayard in the sum of $3,128, representing the $2,128 that Perez paid Alessi & Bayard and $1,000 in punitive damages. Respondent paid the judgment in full in January 2012.

4. On July 3, 2011, the State Bar opened an investigation in case no. 11-O-15120, pursuant to a complaint filed by Perez ("Perez matter"). On October 14, 2011, a State Bar investigator wrote to Respondent regarding the Perez matter. Respondent received the letter. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Perez matter. Respondent received the letter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

5. On or about November 3, 2011, the State Bar investigator wrote a second letter to Respondent regarding the Perez matter. The investigator's second letter requested that Respondent respond in

writing to specified allegations of misconduct being investigated by the State Bar in the Perez matter. Respondent received the letter of November 3, 2011. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

6. On or about December 5, 2011, the State Bar investigator wrote a third letter to Respondent regarding the Perez matter. The investigator's third letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Perez matter. Subsquent to this date, respondent telephoned the investigator and informed him that Perez had been reimbursed in full. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator. Respondent received the letter of December 5, 2011.

CONCLUSIONS OF LAW:

7. By failing to correct the Petition deficiencies, and by failing to re-file the Petition, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the Rules of Professional Conduct.

8. By not providing a written response to the allegations in the Perez matter or otherwise cooperating in the State Bar investigation of the Perez matter, Respondent willfully failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

9. By not promptly returning the unearned legal fees to Perez, Respondent willfully failed to return unearned fees in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 11-O-15204 (Leticia Williams)

FACTS:

1. On June 8, 2010, Leticia Williams ("Williams") hired Respondent's law firm Alessi & Bayard to assist her with an ongoing dispute with her lender regarding her home located in Riverside, California. The firm agreed to provide the following services: conduct an analysis of Williams's loan documents; ascertain options; contact Williams to discuss legal options and determine appropriate action; conduct pre-litigation negotiations with the lender, if appropriate; prepare a complaint for filing with the court; and, substitute into and prosecute any on-going litigation regarding Williams' loan. Pursuant to the agreement Williams paid Alessi & Bayard an initial payment of $1,500. The agreement provided that that Williams pay Respondent $1,000 on the 8th of every month until her matter was concluded. Williams did not make any further payments.

2. On August 25, 2010, Williams met with Respondent. At that meeting, Respondent told Williams that he had not started working on Williams' matter. Respondent assured Williams that he would commence working on her matter in two weeks. After meeting with Williams, Respondent drafted a complaint for filing in her matter. On September 22, 2010, Respondent requested $370 for the filing fee in the matter. Williams paid Alessi & Bayard the $370 but the complaint was never filed because Williams had not paid the monthly installments due under the fee agreement.

3. Respondent did not inform Williams that the complaint would not be filed because she had not paid the monthly installments.

4. On December 8, 2010, six months after hiring Alessi & Bayard, Williams and Respondent met to discuss her matter. Williams told Respondent that her home in Riverside had been sold by the lender and asked for a status report. Respondent advised Williams that he had ceased working on her matter due to non-payment of her $1,000 monthly fee. At that time Respondent's employment terminated.

5. Williams requested in December 2010 that Alessi & Bayard to refund the $1,870 paid to the firm. These monies have since been repaid in full.

6. On August 2, 2011, the State Bar opened an investigation in case no. 11-O-15204, pursuant to a complaint filed by Williams ("Williams matter"). On September 27, 2011, a State Bar investigator wrote to Respondent regarding the Williams matter. The investigator's letter requested that Respondent

respond in writing to specified allegations of misconduct being investigated by the State Bar in the Williams matter. Respondent received the letter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

7. On October 12, 2011, the State Bar investigator wrote a second letter to Respondent regarding the Williams matter. The investigator's second letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Williams matter. Respondent received the letter of October 12, 2011. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

8. On or about November 15, 2011, Respondent faxed a letter to the investigator stating that the letter contained attachments consisting of Respondent's reply to Williams and an accounting of fees. The faxed letter dated November 15, 2011 did not contain any attachments.

9. The State Bar investigator wrote an email to Respondent on November 23, 2011 advising Respondent that no attachments were received and requesting that Respondent resend the requested documentation to the investigator. On December 5, 2011, the investigator called Respondent's office and was advised to leave a message requesting the attachments, which he did. Respondent failed to reply to the request to resend the attachments regarding the Williams matter. At no time has Respondent provided a written response to the allegations in the Williams matter.

10. Respondent has not provided Williams with an accounting of the attorney fees and costs paid by Williams.

CONCLUSIONS OF LAW:

11. By not filing the complaint for Williams because she had not paid the fees as agreed, 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.

12. The services provided by Respondent were of no practical value to Williams and the fee was not earned. By not promptly any part of a fee paid in advance that has not been earned Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2).

13. By failing to render an accounting to Williams regarding the advanced fees that she paid Alessi & Bayard, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

14. By failing to inform Williams that the complaint was not going to be filed because she had not paid the monthly installments, Respondent wilfully violated Business and Professions Code section 6068(m).

15. By not providing the State Bar with the documents related to Williams complaint, Respondent wilfully violated Business and Professions Code section 6068(i).

Case No. 11-O-18131 (Lee)

FACTS:

1. On or about March 15, 2009, Eloise Lee ("Lee") hired Respondent's firm Alessi & Bayard to represent her against Canyon National Bank and RC Group Construction Company regarding an ongoing dispute with related related to a construction loan on an investment property and the fact that the contractor and the bank allegedly conspired to allow improper progress payments not warranted by the amount of work completed on the project . Respondent agreed to provide the following services: conduct an analysis of Lee's loan documents; ascertain options; contact Lee to discuss legal options and determine appropriate action; conduct pre-litigation negotiations with the lender, if appropriate; prepare a complaint for filing with the court; and, substitute into and prosecute any on-going litigation regarding Lee's loan. Lee initially paid Allessi & Bayard $3,350.00 including a $350 filing fee. The fee agreement further provided that Lee pay Respondent $1,000 on the 8th of every month until her matter was concluded. During the period of representation, Lee made several more payments, paying a total $8,400 paid to Alessi & Bayard.

2. Lee contacted Respondent on March 30, 2009. Respondent advised her that he would file her complaint the following day. The complaint was filed but the action was ultimately dismissed after Respondent missed several court appearances.

3. Respondent did not inform Lee that her action had been filed or that it had been dismissed.

CONCLUSIONS OF LAW:

4. By missing court appearances and allowing Lee's action to be dismissed, Respondent intentionally, recklessly, or repeatedly failed to perform legal services in violation of rule 3-110(A) of the Rules of Professional Conduct.

5. The legal services that Respondent provided were of no practical value to Lee. The fees paid to Alessi & Bayard were unearned. By failing to promptly refund the unearned advanced fees to Lee, Respondent wilfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 12-O-10452 (Waltower)

FACTS:

1. On or about February 19, 2009, Vesta M. Waltower ("Waltower") hired Alessi & Bayard to represent her in order to avoid foreclosure of her home. Allessi & Bayard agreed to provide the following services: conduct an analysis of her loan documents; ascertain options; contact Waltower to discuss legal options and determine appropriate action; conduct pre-litigation negotiations with the lender, if appropriate; prepare a possible bankruptcy petition with the court; and, substitute into and prosecute any on-going litigation regarding Waltower loan. Waltower paid Respondent $1,500.00 in advance fees.

2. While representing Ms. Waltower, Respondent determined that she had been the victim of an unscrupulous "equity skimmer" who induced her to refinance her home as part of their victimization of her. Respondent's investigation revealed that the individuals who victimized her had moved to Tennessee and had filed bankruptcy, effectively making recovery against them impossible. Respondent concluded that an action against Ms. Waltower's lender in an attempt to prevent the foreclosure sale of her home was untenable.

3. Alessi & Bayard and Respondent subsequently represented Ms. Waltower in an eviction proceeding filed against her.

4. In 2010, Respondent filed a bankruptcy petition on behalf of Waltower . Respondent's associate Eve Holland made all required court appearances in Ms. Waltower's bankruptcy matter. On or about June 13, 2010, respondent sent correspondence to Ms. Waltower reminding her of the need to complete the financial management course and warning her that the case would be dismissed if she failed to do so. In August 2010, Waltower's bankruptcy case was closed by the court because she failed to complete the required financial management course necessary to obtain her discharge.

5. After the proceedings were concluded, after numerous requests by Waltower, Respondent did not provide Ms. Waltower with an accounting of the legal services provided to her by Alessi & Bayard.

CONCLUSION OF LAW:

6. By failing to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct.

Case No. 12-O-12555 (Medina)

FACTS:

1. In November, 2009, Mary Medina ("Medina") hired Respondent's law firm Alessi & Bayard to assist her in preventing the impending foreclosure of her home. Respondent agreed to provide the following services: conduct an analysis of her loan documents; ascertain options; contact Medina to discuss legal options and determine appropriate action; conduct pre-litigation negotiations with the

lender, if appropriate; prepare a possible bankruptcy petition under Chapter 11 of the United States Bankruptcy Court; and, substitute into and prosecute any on-going litigation regarding her loan. Medina paid Respondent a total of $9,500.00 in attorney fees.

2. Due to the urgency of the matter and some uncertainty as to whether Medina could be placed into a Chapter 13 or would have to file a Chapter 11, a skeletal chapter 13 petition was filed with the purpose of evaluating Medina's overall financial condition and to be followed up on with either a complete chapter 13 petition or with a motion to covert the matter into a chapter 11 bankruptcy.

3. The initial bankruptcy filing on behalf of Medina was filed on January 12, 2010. While this matter was pending, the bank holding the note on Medina's home foreclosed on the property despite the existence of the automatic stay. After consultation between Respondent and Medina on these issues, the decision was made to allow the initial bankruptcy to be dismissed so that the situation could be re-evaluated and a strategy put into place that would be most beneficial to Medina. This case was dismissed on February 4, 2010.

4. On February 9, 2010 Respondent filed a new chapter 13 petition on Medina's behalf. This petition was initially filed on a skeletal basis but all of the additional documentation including the schedules and the chapter 13 plan was filed on or about February 24, 2010. On April 27, 2010, the matter was dismissed.

5. On May 11, 2010, a final chapter 13 bankruptcy petition was filed on Medina's behalf. On October 18, 2010, the trustee expressed concerns regarding Medina's eligibility for a Chapter 13 discharge as well as concern by the trustee of Medina's insistence that she be allowed to keep two luxury vehicles which the trustee felt was excessive. In addition, Medina had only made a couple of her required plan payments to the trustee's office, totaling about $1,361.

6. In June of 2011, Respondent attempted to obtain a loan modification for Medina. The loan modification was unsuccessful because Medina was unable to substantiate sufficient income.

CONCLUSIONS OF LAW:

7. By failing to render appropriate accounts to a client regarding all funds coming into Respondent's possession, Respondent wilfully violated rule 4-100(B)(3) of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES-HARM

Respondent may have caused additional emotional distress to his clients who were already under the strain of the foreclosure of their homes.

MITIGATING CIRCUMSTANCES—EMOTIONAL/PHYSICAL DIFFICULTIES

The stress of dealing with the financial problems and large caseload affected Mr. Bayard's health. In 2010, he began to feel tired, occasionally dizzy and sometimes suffered what he interpreted as heartburn. Mr. Bayard consulted with a physician and was told that nothing wrong was apparent. Relying on this medical opinion, he took no additional steps to address his health until he collapsed with a heart attack on August 11, 2011. One of his arteries was found to be 99% blocked. Mr. Bayard was informed that his heart had significant scarring indicating that this had not been his first heart attack. Mr. Bayard had been suffering from severe health problems for a long time without fully realizing it. Although he spent five days in the hospital, he has continues to recover from the heart attack, both physically and psychologically; he continues to have nightmares about the experience and his hospitalization.The stress of dealing with the unexpected financial pressures from the collapse of Respondent's practice in 2009-2010 was a factor in the deterioration of Respondent's health during the

same period. Financial stress and the health issues associated with it were causally related to Respondent's misconduct during this time period.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was May 31, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

Respondent's misconduct involved five former clients as well as a failure to participate in one of the investigations. Respondent's misconduct, balanced with the aggravating and mitigating factors warrants discipline because Respondent has a prior record of discipline, addressed below in more detail, his actions evidence multiple instances of misconduct including failure to perform and communicate, and, clients were financially harmed due to Respondent retention of unearned fees. See *In the matter of Harold V. Sullivan* II 3 cal. State Bar Ct. Rptr. 608 the court ordered Respondent suspended for 60 days for multiple instances of misconduct in multiple matters.

Respondent's misconduct stipulated in this matter was contemporaneous with the misconduct stipulated in the prior discipline matter. Preliminarily, the applicable Standards should apply to this matter. The assessment of appropriate discipline begins with an application of the Standards, which are entitled to "great weight," (*In re Silverton* (2006) 36 Cal.4th 81, 92; *In re Naney* (1990) 51 Cal.3d 186, 190) and provide a presumptively appropriate level of discipline (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607). Adherence to the Standards also promotes the consistent and uniform application of disciplinary measures. (*In re Morse* (1995) 11 Cal.4th 184, 206.)[1]

Standards:

Standard 1.3 provides that the primary purpose of disciplinary proceedings is the protection of the public, the courts and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession.

Pursuant to Standard 1.2 of the Standards for Attorney Sanctions for Professional Misconduct:

> (b) "Aggravating circumstance" is an event or factor established clearly and convincingly by the State Bar as having surrounded a member's professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.
>
> Circumstances which shall be considered aggravating are:
>
> (ii) that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

Pursuant to Standard 1.6 of the Standards for Attorney Sanctions for Professional Misconduct:

> (b)(i) Aggravating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those aggravating circumstances, by themselves and in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required to fulfill the

[1] The burden is on the Respondent to demonstrate the existence of extraordinary circumstances justifying a lesser sanction than that justified by the Standards. (*Silverton, supra,* 36 Cal.4th at p. 92; *Morgan, supra,* 51 Cal.3d at p. 602).

purposes of imposing sanctions set forth in standard 1.3. In that case, a greater degree of discipline than the appropriate sanction shall be imposed or recommended.

Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of rule 3-110(A) of the Rules of Professional Conduct shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Pursuant to Standard 2.6 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of any of the following provisions 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 imposing discipline set forth in standard 1.3.

The aggravating force of prior discipline is diminished if the misconduct occurred during the same period as the misconduct in the prior matter. *In the Matter of Robert Michael Sklar* 2 Cal. State Bar Ct. Rptr. 602 (1993). Respondent's misconduct in this matter occurred during the same period of time as most of the misconduct in the recent prior matter. Therefore, the court may consider what the discipline would have been if all the charged misconduct during the time period had been brought as one case.

In *Sklar* the Review Department held that the aggravating force of prior discipline is generally diminished if the misconduct underlying it occurred during the same time period. Standard 1.7(a) provides that if an attorney has one prior imposition of discipline "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." (Italics added; *In re Silverton* (2005) 36 Cal. 4th 81, 90-91 [exception to standard 1.7(a) is in the conjunctive].) Respondent's earlier discipline was not remote in time and involved contemporaneous acts and the same misconduct as the prior matter. Thus, the two-prong exception to standard 1.7(a)'s requirement of greater discipline for recidivist attorneys is not applicable in the present case and there is no other compelling justification to deviate from the standard. Had Respondent's present matters been included in the prior matter it would have likely resulted in the same discipline to a combined total of 120 days.[2]

The *Sklar* court stated that the purpose of of considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms, citing *In re Hagen* 2 Cal. State Bar Ct. Rptr. 153, at page 171 and *In re Miller* 1 Cal. State Bar Ct. Rptr. 131. Respondent entered into the stipulation that formed the basis for his prior discipline in July 2011. Most of the misconduct herein occurred before Respondent entered into the prior stipulation.[3] Therefore, with respect to most of the misconduct within this stipulation, Respondent did not have an opportunity to learn from the prior disciplinary matter and conform his behavior.

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[2] The combined total of both matters will be 120 days actual suspension and would have required that Respondent comply with California Rules of Court, 9.20. An unintended consequence of this resolution will be that Respondent will not be required to comply with 9.20, California Rules of Court.

[3] Respondent's failure to cooperate in disciplinary investigation occurred after Respondent had entered into the prior stipulation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 3, 2012, the prosecution costs in this matter are $2,797.00. 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.

In the Matter of:	Case number(s):
Thomas James Bayard	11-O-15120 , 11-O-15204, 11-O-18131, 12-O-10452 & 12-O-12555

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	Signature	Print Name
5/29/12		Thomas James Bayard
	Respondent's Signature	Print Name
5/26/12		David Cameron Carr
Date	Respondent's Counsel Signature	Print Name
5/31/2012		Adriana Burger
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: Thomas James Bayard	Case Number(s): 11-O-15120 , 11-O-15204, 11-O-18131, 12-O-10452 & 12-O-12555

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.

In the Financial Conditions on page 7, paragraph a., the interest accrual date for Mary Medina is changed from March 1, 2010 to March 15, 2010.

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.)**

6-21-12

Date

Judge of the State Bar Court

RICHARD A. HONN

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 June 21, 2012, 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:

DAVID C CARR ESQ
LAW OFFICE OF DAVID CAMERON CARR
530 B ST STE 1410
SAN DIEGO, CA 92101

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

Adriana M. Burger, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 21, 2012.

Julieta E. Gonzales
Case Administrator
State Bar Court