

PUBLIC MATTER

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Kimberly G. Anderson Senior Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213)765-1083 Bar # 150359	Case Number(s): 12-O-12506	For Court use only FILED MAY 02 2013 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent Charles Reginald Wear 27381 Cottonwood Ave. Moreno Valley, CA 92555 (951)251-2048 Bar # 102381	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Charles Reginald Wear Bar # 102381 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 February 5, 1982.
- (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 15 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: Costs to be paid in equal amounts prior to February 1 for the three 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 11-O-15087
 - (b) Date prior discipline effective August 17, 2012
 - (c) Rules of Professional Conduct/ State Bar Act violations: Rules 3-700(D)(2) and 4-100(B)(4) and Business and Professions Code, section 6068(i)
 - (d) Degree of prior discipline One year stayed suspension and two years' probation
 - (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 Stipulation Attachment at page 11.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See Stipulation Attachment at page 11.
- (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 Stipulation Attachment at page 11.
- (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.

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(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 Stipulation Attachment at page 12.

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 three (3) 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 one (1) year.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution 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.

(Effective January 1, 2011)

Actual Suspension

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- (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 has already been ordered to attend Ethics School as a condition of his probation in State Bar disciplinary case no. 11-O-15087. (See rule 290, Rules of Procedure of the State Bar of California.)
- (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 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

(Effective January 1, 2011)

Actual Suspension

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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: The protection of the public and the interests of the Respondent do not require passage of the MPRE in this case. Respondent is already required to take and pass the MPRE as a condition of his probation in disciplinary case no. 11-O-15087. (See In the Matter of Respondent G (Review Dept.1992), 2 Cal. State Bar Ct. Rptr. 181.).

- (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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Charles Reginald Wear

CASE NUMBER(S): 12-O-12506

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. 12-O-12506 (Complainant: Andrea Beckford)

FACTS:

1. In August 2009, Andrea Lewis (now Andrea Beckford) ("Lewis") hired Respondent to file a personal bankruptcy petition on her behalf.
2. On January 8, 2010, Respondent filed a bankruptcy petition on behalf of Lewis in the United States Bankruptcy Court for the Central District of California, Case No. 6:10-bk:10-10591 ("bankruptcy action").
3. On April 19, 2010, Rakiya Jones filed an adversary complaint against Lewis related to the bankruptcy action, entitled *Rakiya Jones v. Andrea Lewis*, Case No. 6:10-ap-01280-MW ("adversary action"). Respondent agreed to represent Lewis in the adversary action.
4. On July 16, 2010, Respondent sent Lewis an email containing a first set of form interrogatories and a first set of requests for production of documents served by Gregory Brittain ("Brittain"), Rakiya Jones's attorney in the adversary action. Respondent's July 16, 2010 email stated that Lewis's responses to the discovery were due on August 4, 2010, and asked Lewis to provide responses and documents by July 25, 2010 (i.e., ten days before August 4, 2010). Respondent and Lewis provided proper responses to the first sets of form interrogatories and requests for production of documents. Lewis provided Respondent with all of the documents and information he requested.
5. On December 24, 2010, Brittain served Lewis with a second set of interrogatories and a notice of taking Lewis's deposition and request for Lewis to produce documents at her deposition, which was set for January 27, 2011. Lewis's responses to the second set of interrogatories were due on or before January 28, 2011. Respondent and Brittain subsequently agreed to continue Lewis's deposition and to permit Lewis to provide responses to the second set of interrogatories and the request to produce documents at the deposition not less than 24 hours before the deposition.
6. On January 18, 2011, and again on January 30, 2011, Lewis sent Respondent emails containing her responses to the second set of form interrogatories, with the exception of responses to interrogatories 19 and 20. In her emails, Lewis stated she did not know how to answer interrogatories 19 and 20. Respondent received Lewis's January 18 and January 30, 2011 emails, and advised Lewis

not to worry about answering interrogatories 19 and 20. Respondent advised Lewis she could address interrogatories 19 and 20 during her deposition. Respondent failed to serve Brittain with Lewis's responses to the second set of interrogatories, and failed to inform Lewis he had not served Brittain with Lewis's responses. Respondent failed to inform Lewis that she needed to review the document production request in connection with the notice of taking deposition that Brittain had served.

7. On February 17, 2011, Respondent agreed with Brittain that Lewis would appear for her deposition on February 21, 2011. Respondent did not serve Brittain with Lewis's responses to the second set of interrogatories at any time prior to the February 21, 2011 deposition. Respondent did not discuss with Lewis the need to produce additional documents at her deposition.

8. On February 21, 2011, Brittain began examining Lewis at her deposition. On February 21, 2011, Respondent effectively terminated Lewis's deposition without legal justification by walking out of the deposition.

9. On April 1, 2011, Brittain filed a Stipulation and Motion to Compel, Extend the Time Limit for Discovery and for Sanctions in the adversary action requesting the court to order Lewis to appear at her deposition, to provide responses to the second set of interrogatories, and to search for documents responsive to the request for production of documents included with the notice of taking deposition. Respondent had notice of the Stipulation and Motion but failed to inform Lewis that she must produce further responsive documents. Respondent failed to cooperate with Brittain in executing a Stipulation regarding the discovery dispute.

10. On April 12, 2011, Respondent and Brittain filed a Supplemental Stipulation in the adversary action whereby Respondent agreed to produce Lewis for her deposition on April 13, 2011, April 19, 2011, and if necessary, April 21, 2011. Respondent agreed that Lewis would provide good faith answers to the second set of interrogatories without objection at least 24 hours before the April 13, 2011 deposition, and Respondent agreed that Lewis would search for documents responsive to the request for production of documents included with the notice of taking deposition. Respondent and Brittain agreed by way of the Supplemental Stipulation that the Motion to Compel and For Sanctions would be taken off calendar if Respondent and Lewis appeared for the deposition and provided good faith, timely responses to the second set of interrogatories and the document production request.

11. On April 13, 2011, Brittain resumed Lewis's deposition in the adversary action. Respondent failed to provide Brittain with Lewis's responses to the second set of interrogatories, failed to inform Lewis he had not served Brittain with her responses to the second set of interrogatories, and failed to inform Lewis prior to the deposition that she must search for additional responsive documents, necessitating that Lewis's deposition go forward another day.

12. On April 19, 2011, Brittain resumed taking Lewis's deposition in the adversary action. Respondent again failed to provide Brittain with Lewis's responses to the second set of interrogatories, and failed to inform Lewis he had not served Brittain with her responses to the second set of interrogatories. Respondent walked out of the deposition after approximately fifteen minutes, without any legal justification. Respondent effectively terminated Lewis's April 19, 2011 deposition.

13. On April 21, 2011, the court held a hearing in the adversary proceeding and authorized Brittain to file a new motion based upon the alleged breach of the April 12, 2011 Supplemental Stipulation.

14. On April 25, 2011, Respondent sent Lewis an email for the first time directing her to search her emails and print them out in order to comply with the document production request associated with the notice of taking deposition. On May 3, 2011, Lewis provided Respondent with the requested documents.

15. On May 12, 2011, Brittain filed a Stipulation for Second Motion to Compel and For Sanctions and Notice of Second Motion to Compel and For Sanctions, requesting the court to strike Lewis's answer based on her failure to provide discovery responses, enter her default in the adversary action, and award \$8,587.50 in monetary sanctions against Lewis. Respondent had notice of the stipulation and motion and did not cooperate in entering into a stipulation with Brittain regarding the discovery dispute or attempting to resolve the dispute. The Second Motion to Compel was set for hearing on June 2, 2011. Although Respondent had notice of the hearing, he failed to appear at the hearing and failed to file any opposition to the motion.

16. On June 2, 2011, the court continued the hearing on the second motion to compel to June 23, 2011. Respondent had notice of the June 23, 2011 hearing.

17. On June 14, 2011, Respondent served Brittain with Lewis's responses to the second set of interrogatories and emails in response to the document production request.

18. On June 21, 2011, Respondent filed a Declaration in Opposition to Sanctions in the adversary action stating that he had suffered a breakdown, among other medical conditions. Respondent did not tell Lewis that he had any medical conditions which impacted his ability to properly handle the bankruptcy or the adversary proceeding.

19. On June 23, 2011, the court held a hearing in which it granted Jones's second motion to compel, ordered Lewis to pay Jones a total of \$12,012.50 in monetary sanctions by July 29, 2011, and ordered that Lewis's failure to pay the sanctions would result in the court striking her answer in the adversary action. On June 23, 2011, the court set an Order to Show Cause hearing ("OSC") for August 4, 2011, as to why Lewis's default should not be entered in the adversary action. Respondent appeared at the June 23, 2011 hearing and had notice of the court's order and of the August 4, 2011 OSC.

20. On June 27, 2011, Respondent sent Lewis an email advising her that the court had awarded \$12,012.50 in sanctions against her, to be paid by July 29, 2011, or Lewis's answer would be stricken, and advising Lewis that the court had set an OSC for failure to provide emails in discovery. Respondent also advised Lewis in the June 27, 2011 email that he would no longer represent her in the adversary action, effectively terminating his representation. Respondent failed to file a substitution of attorney form, or to file a motion to withdraw as Lewis's counsel of record, with the court.

21. On August 4, 2011, the court held a hearing regarding the OSC. Respondent failed to appear at the August 4, 2011 hearing, and Lewis appeared and was substituted in pro per. Lewis was not able to pay the sanctions and had attempted to explain to the court that the sanctions resulted from Respondent not having advised her of his failure to serve Brittain with discovery and from Respondent not having timely advised her of the need to look for additional documents to produce in response to the notice of taking deposition. On August 8, 2011, the court entered its order striking Lewis's answer and entering her default in the adversary action due to Lewis's failure to pay the sanctions.

22. On March 1, 2012, the court entered an amended default judgment in the amount of \$153,276.86 in favor of Jones and against Lewis in the adversary action.

23. On April 2, 2012, the State Bar opened an investigation based upon Lewis's complaint.

24. On April 10, 2012, a State Bar investigator sent Respondent a letter regarding the allegations in Lewis's complaint and requesting a written response to the allegations by April 24, 2012. The investigator mailed the letter to Respondent at his State Bar membership records address. Respondent received the April 10, 2012 letter.

25. On April 23, 2012, Respondent sent a letter to the State Bar investigator requesting an extension to May 24, 2012 to respond to the April 10, 2012 letter and requesting the State Bar investigator to send future correspondence to his home office address.

26. On April 24, 2012, the State Bar investigator sent a letter to Respondent at his home office address, granting Respondent's request for an extension and requesting a written response to the allegations by May 24, 2012. Respondent received the letter but failed to provide a written response by May 24, 2012.

27. On May 31, 2012, the State Bar investigator sent a letter to Respondent at his home office address, requesting a written response to Lewis's allegations by June 14, 2012. Respondent received the letter.

28. On June 6, 2012, attorney Charles V. Wear (Respondent's son) sent a letter to the State Bar investigator advising that he was representing Respondent regarding Lewis's complaint, and requesting an extension to June 30, 2012 to respond.

29. On June 11, 2012, the State Bar investigator sent a letter to Charles V. Wear, granting Respondent's request for an extension and requesting a written response to the allegations by June 29, 2012. Charles V. Wear received the letter but failed to provide a written response by June 29, 2012.

30. On July 12, 2012, Charles V. Wear sent a letter to the State Bar investigator advising that he no longer represented Respondent and directing the State Bar investigator to send all future correspondence directly to Respondent.

31. Respondent failed to provide a written response to the allegations being investigated by the State Bar and has otherwise failed to cooperate or participate in any way in the disciplinary investigation.

CONCLUSIONS OF LAW:

32. By failing to serve Lewis's responses to the second set of interrogatories between on or about January 28, 2011 and on or about June 14, 2011, by failing to provide documents responsive to the deposition notice between February 21, 2011 and June 14, 2011, by failing to counsel Lewis that she had to search emails and produce them for deposition at any time before April 25, 2011, by failing to advise Lewis that he had suffered a breakdown and other conditions that rendered him unable to handle the adversary and bankruptcy proceedings properly, and by failing to appear at the August 4, 2011 OSC

hearing, 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.

33. By telling Lewis he would no longer represent her in the June 27, 2011 email, by failing to file a substitution of attorney with the court, by failing to file a motion to withdraw in the adversary hearing, and by failing to appear at the August 4, 2011 OSC on behalf of Lewis, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

34. By failing to inform Lewis that he had not served Lewis's responses to the second set of interrogatories between January 30, 2011 and June 14, 2011, by failing to inform Lewis that he had not provided responsive documents produced by Lewis to Brittain and Jones, by failing to inform Lewis of Brittain's motion for sanctions, by failing to inform Lewis that she must produce further responsive documents pursuant to the April 12, 2011 stipulation, and by failing to inform Lewis that he had suffered a breakdown which affected his ability to perform competently in her adversary proceeding, 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 Business and Professions Code, section 6068(m).

35. By failing to provide a written response to the State Bar investigator's April 10, April 24, May 31, and June 11, 2012 letters, and by failing to otherwise cooperate or participate in the State Bar's investigation of Lewis's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent in willful violation of Business and Professions Code, section 6068(i).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.2(b)(i)): Respondent has a prior record of discipline in State Bar Court Case No. 11-O-15087 (Supreme Court Case No. S201892), which became effective August 17, 2012. The misconduct in that case occurred between April 2010 and October 2011 and involved violations of rules 3-700(D)(2) and 4-100(B)(4) of the Rules of Professional Conduct and a violation of Business and Professions Code, section 6068(i). Respondent received a one year stayed suspension and two years' probation.

Harm (Std. 1.2(b)(iv)): Respondent's conduct significantly harmed his client Lewis as her answer was stricken and a default judgment was entered against her in the adversary action in the amount of \$153,276.86. As a result of Respondent's misconduct, the court also personally sanctioned Lewis in the amount of \$12,012.50.

Indifference (Std. 1.2(b)(v)): Respondent signed the disciplinary stipulation in disciplinary case no. 11-O-15087 on February 16, 2012, in which he admitted, among other violations, a violation of Business and Professions Code, section 6068(i). Respondent again failed to cooperate in the disciplinary investigation in this matter between April and June 2012, even after failing to cooperate in the previous disciplinary investigation.

Multiple Acts of Misconduct (Std. 1.2(b)(ii)): Respondent committed four acts of professional misconduct in this matter.

ADDITIONAL MITIGATING CIRCUMSTANCES.

Family Problems: Respondent's wife unexpectedly passed away on March 14, 2012, leaving Respondent as the sole parent for their nine-year old son, which was shortly before Respondent received the letters from the State Bar Investigator requesting that he provide a written response to Lewis' allegations. Prior to his wife's death, she had been diagnosed with certain mental health issues, which caused significant stress and strain on the marital relationship. On May 20, 2011, Respondent's father in law passed away from heart failure, which also caused additional stress to Respondent's wife, and consequently, to Respondent. As a result of these stressors, Respondent suffered from emotional difficulties, anxiety, depression and insomnia for which he sought and obtained some psychological counseling and medical treatment between December 2010 and April 2011. In *In re Naney* (1990) 51 Cal.3d 186, 197, the Court recognized that marital problems can be considered a mitigating factor, and extreme emotional difficulties resulting from those marital problems may be a mitigating factor where there is a nexus between the problems and the misconduct. Respondent's emotional difficulties, anxiety, depression and insomnia impacted his handling of client matters, including the Lewis matter. (See *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal.State Bar Ct. Rptr. 509, 519, where the Review Department accorded some mitigation to the attorney based upon the attorney's own testimony to marital problems and the disruption to his law practice.) Respondent's failure to cooperate in the disciplinary investigation occurred shortly after his wife had unexpectedly passed away.

Cooperation: Although Respondent failed to cooperate in the disciplinary investigation, upon being advised that disciplinary charges would be filed, Respondent agreed to enter into a full and complete factual stipulation to facts and to legal conclusions and to disposition of this matter prior to the State Bar having to file disciplinary charges in this matter, thereby saving the State Bar the time and resources of having to conduct a trial in this matter. (See, *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "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." (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing four acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent's misconduct is found in standard 2.6, which applies to Respondent's violations of Business and Professions Code, sections 6068(m) and 6068(i). Standard 2.6 provides for "disbarment or suspension depending upon 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."

Respondent's prior discipline is an aggravating factor. (See, Standards 1.2(b)(i) and 1.7(a).) Standard 1.7(a) states:

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...the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline 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.

While there is some overlap between some of the misconduct in Respondent's prior disciplinary matter and the current disciplinary matter as it pertained to Respondent's abandonment of Lewis, Respondent's failure to cooperate in the disciplinary investigation occurred after he entered into the stipulation for discipline in case no. 11-O-15087. Therefore, the prior record of discipline should be treated as aggravation. The analysis in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619, which permits the court to reweigh overlapping disciplinary matters as if they were a single disciplinary matter, is not applicable where new misconduct occurred after the filing of formal charges in the prior case. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 111-112.)

Since Respondent received a stayed suspension in his first disciplinary matter, Standard 1.7(a) requires that the discipline be greater. Moreover, the considerations in Standard 2.6 requires a significant period of actual suspension.

In this case, there are four aggravating factors and two mitigating factors. Respondent's misconduct resulted in significant harm to Lewis. Respondent exhibited some indifference in not responding to the State Bar's investigation in this matter, which is explained to some extent, but not completely, by the unexpected passing of Respondent's wife. Although Respondent did not cooperate in the investigation, he has agreed to enter into a full and complete stipulation in this matter. Respondent's actions involve multiple acts of misconduct. Moreover, Respondent's misconduct in this case is similar to the misconduct in his first disciplinary matter and Respondent has once again failed to cooperate in a disciplinary investigation. When an attorney repeats the same type of misconduct as in a prior disciplinary matter, it raises a concern that he attorney has not learned from the past misconduct and has not been able to conform his conduct to ethical standards. Therefore, a one-year actual suspension, two years' stayed suspension and a three-year period of probation is necessary to protect the public, maintain high professional standards and impress upon Respondent his ethical obligations to his clients and to cooperate with the State Bar.

A one-year actual suspension is also consistent with case law.

In *Conroy v. State Bar* (1991) 53 Cal.3d 495, an attorney with two prior records of discipline received a one-year actual suspension for abandoning a client, making misrepresentations to the client and failing to cooperate in a disciplinary investigation. Even though the attorney had two prior records of discipline, the Court gave less weight to the second prior, which involved a reproof violation, and applied Standard 1.7(a).

In *Lister v. State Bar* (1990) 51 Cal.3d 1117, an attorney with one prior private reproof, which was found to be minor and remote in time, committed misconduct in three client matters involving improper withdrawal, failure to communicate, failure to return files and failure to cooperate in a disciplinary investigation. The Supreme Court imposed a nine-month actual suspension.

Respondent's misconduct warrants greater discipline than the attorney received in *Lister*, since Respondent's prior misconduct is not remote in time and involved a stayed suspension and probation. As stated above, a one year actual suspension is appropriate and necessary to maintain high professional standards, to protect the public and to impress upon Respondent his ethical obligations.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A(7), was April 5, 2013.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 5, 2013, the prosecution costs in this matter are approximately \$3,811.90. 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.

(Do not write above this line.)

In the Matter of: Charles Reginald Wear	Case Number(s): 12-O-12506
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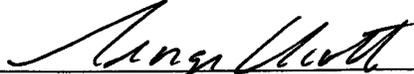
ACTUAL SUSPENSION ORDER

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.)**

5-2-13
Date


GEORGE E. SCOTT, JUDGE PRO TEM
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 May 2, 2013, 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:

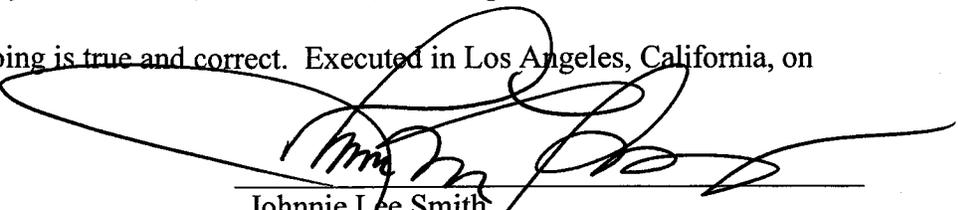
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

CHARLES REGINALD WEAR
CHARLES R. WEAR, ATTORNEY AT LAW
27381 COTTONWOOD AVE
MORENO VALLEY, CA 92555

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

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2013.



Johnnie Lee Smith
Case Administrator
State Bar Court