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**State Bar Court of California
Hearing Department
San Francisco
ALTERNATIVE DISCIPLINE PROGRAM**

<p>Counsel For The State Bar</p> <p>Manuel Jimenez Senior Trial Counsel 180 Howard Street San Francisco, CA 94105-1639 (415) 538-2288</p> <p>Bar # 218234</p>	<p>Case Number (s) 13-O-12373-LMA 13-O-13006</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER FILED <i>R</i></p> <p>MAY 19 2014</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Alice Brown Traeg 1849 Chestnut Street, Apt. 1 San Francisco, CA 94123 (415) 567-8140</p> <p>Bar # 79823</p>	<p>Submitted to: Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: ALICE BROWN TRAEG</p> <p>Bar # 79823</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 23, 1978**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding the order.
- (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."



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- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **See attachment at page 6.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See attachment at page 6.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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:

**No Prior Discipline, see attachment pg. 6.
Pretrial Stipulation, see attachment pg. 6.**

7. By failing to provide a response to the State Bar's May 29, 2003 letter and by failing to otherwise cooperate and participate in the State Bar's investigation of the Peltner complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in violation of Business and Professions Code section 6068(i).

Case No. 13-O-13006 (State Bar Investigation)

FACTS:

8. On October 13, 2010, Respondent was appointed as executor of the decedent's will in the matter, *Estate of Sue V. Poderis*, San Francisco Superior Court, case number PES-10-293907.

9. On January 15, 2013, the court issued an order for Respondent to file a Petition for Final Distribution by January 28, 2013, in the *Estate of Sue V. Poderis* matter. Respondent received the order. Respondent failed to file a Petition for Final Distribution by January 28, 2013.

10. On January 28, 2013, the court issued an order suspending Respondent's powers as executor and requiring Respondent to appear on February 11, 2013. Respondent was ordered to show cause why she should not be removed as executor for failing to file the petition for final distribution and ordered to file the petition for final distribution by February 11, 2013. Respondent received the order, but failed to file the petition.

11. On February 11, 2013, Respondent appeared at hearing on the Order to Show Cause. The court removed Respondent as executor, ordered Respondent to file the first and final accounting by March 11, 2013, and ordered Respondent to give all estate documents to the successor executor by March 11, 2013. Respondent failed to file the first and final accounting or give the estate documents to the successor trustee as ordered.

12. On March 11, 2013, the court issued an Order to Show Cause to Respondent, ordering Respondent to appear on March 25, 2013, to explain why the inventory and petition for final distribution had not been filed. Respondent received the order.

13. On March 25, 2013, Respondent failed to appear at the OSC hearing.

14. On April 3, 2013, the court issued an Order to Appear, ordering Respondent to turn over all estate assets to the successor executor by April 8, 2013, to appear on April 22, 2013, and to file an accounting. The Court also imposed sanctions of \$25.00 per day until the accounting was filed. Respondent received the order. Respondent failed to turn over all estate assets to the successor executor by April 8, 2013, did not file the petition, and did not appear in court on April 22, 2013. It was not until December 6, 2013 that Respondent filed an Account and Report of Former Executor and Petition for Its Settlement, Claim for Partial Executor Commissions and Costs, and for Allowance of Paralegal Fees.

15. On May 29, 2013 the State Bar opened an investigation based on a referral from the court in the estate matter. On June 13, 2013, and July 8, 2013, a State Bar investigator sent letters to Respondent requesting that Respondent provide a written response to the allegations that Respondent failed to obey

court orders in the estate matter. Respondent received, but did not respond to the letters or otherwise cooperate in the investigation.

CONCLUSIONS OF LAW:

16. By failing to comply with the court orders of January 15, 2013, January 28, 2013, February 11, 2013, March 11, 2013 and April 3, 2013, Respondent disobeyed or violated an order of the court requiring Respondent to do or forbear an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do or forbear, in willful violation of Business and Professions Code section 6103.

17. By repeatedly failing to prepare and file a Petition for First and Final Accounting and Distribution, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

18. By failing to provide a response to the State Bar's letters of June 13, 2013, and July 8, 2013, and by failing to otherwise cooperate and participate in the State Bar's investigation, Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in violation of Business and Professions Code section 6068(i).

AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.5(f)): Respondent's misconduct caused delays and additional court hearings, causing significant harm to the administration of justice in the *Estate of Sue Poderis* matter.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed 12 acts of misconduct in two client matters, demonstrating multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record: At the time of the misconduct, Respondent had practiced law for nearly 35 years without a prior record of discipline. Although Respondent's misconduct is serious, his 35-year discipline-free practice is a mitigating circumstance. (*See In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious misconduct].)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matters, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.) However the mitigation is tempered by Respondent's failure to cooperate and participate in the State Bar investigation. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 22, 2014, the prosecution costs in this matter are \$4,392.00. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

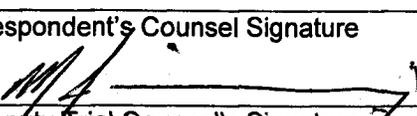
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In the Matter of: Alice Brown Traeg	Case number(s): 13-O-12373 [13-O-13006]
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

February 13, 2014  Alice Brown Traeg
Date Respondent's Signature Print Name

February 13, 2014  Manuel Jimenez
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: Alice Brown Traeg	Case Number(s): 13-O-12373 [13-O-13006]
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ALTERNATIVE DISCIPLINE PROGRAM 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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Date

May 19, 2014


LUCY ARMENDARIZ
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 San Francisco, on May 19, 2014, I deposited a true copy of the following document(s):

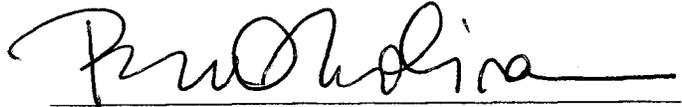
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

By personally delivering a copy of said document(s) to:

MANUEL JIMENEZ
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

ALICE B. TRAEG
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 19, 2014.



Bernadette C.O. Molina
Case Administrator
State Bar Court