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State Bar Court of California
Hearing Department
San Francisco



<p>Counsel For The State Bar</p> <p>Susan I. Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037</p> <p>Bar # 214209</p>	<p>Case Number (s) 10-O-00070 [10-O-00071; 10-O-00077; 10-O-04549]</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>R</i></p> <p>DEC 16 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Carol M. Langford 100 Pringle Ave #570 Walnut Creek, CA 94596 (925) 938-3870</p> <p>Bar # 124812</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Jordan Morgenstern</p> <p>Bar # 134046</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 14, 1988**.
- (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 **10** 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."
- (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."

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- (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):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (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 or a separate attachment entitled "Prior Discipline."
- (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.
- (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 page 8.**
- (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. **See page 8.**
- (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. **See page 9.**
- (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. **See page 9.**
- (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. **See page 9.**
- (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 **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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) 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

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directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) 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 Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW

Case No. 10-O-00070 (The *Mata* matter)

Facts

1. On October 23, 2008, respondent was hired by Hector Mata (“Mata”) to represent Mata in a criminal matter. On the same date, Mata paid respondent \$35,000.00 as advanced fees.
2. On July 3, 2009, Mata sent a letter to respondent requesting an accounting. Soon thereafter, respondent received Mata’s July 3, 2009 letter, but failed to provide an accounting.
3. It was not until April 16, 2010, and only after the State Bar became involved in the matter, that respondent provided an accounting to Mata for the \$35,000.00 paid as advanced fees.

Conclusions of Law

By failing to provide an accounting of his fees to Mata for more than nine months after one was requested, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent’s possession in willful violation of rule 4-100(B)(3) of the Rules of Professional Conduct.

Case No. 10-O-00071 (The *Allasia* matter)

Facts

1. On August 5, 2009, respondent was hired by John Allasia (“Allasia”) to represent Allasia in a civil matter. On the same date, Allasia paid respondent \$2,000.00 as advanced fees in the civil matter.
2. As of August 27, 2009, respondent had not earned any portion of the \$2,000.00 paid as advanced fees by Allasia. On August 27, 2009, Allasia sent a letter to respondent terminating respondent’s services and requested a refund of unearned fees. Soon thereafter, respondent received Allasia’s August 27, 2009 letter, but failed to provide a refund of unearned fees.
3. It was not until February 9, 2010, and only after the State Bar became involved in the matter, that respondent refunded \$2,000.00 in unearned fees to Allasia.

Conclusions of Law

By failing to refund \$2,000.00 in unearned fees to Allasia for more than five months after Allasia first requested the refund, respondent failed to promptly refund unearned fees in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 10-O-00077 (The Bott matter)

Facts

1. On April 26, 2004, respondent was hired by Maya Bott ("Bott") to represent Bott in a marital dissolution matter. On the same date, Bott paid respondent \$5,000.00 as advanced fees in the marital dissolution matter.
2. On April 27, 2004, one day after hiring respondent, Bott decided not to proceed with the marital dissolution. On the same date, Bott terminated respondent's services and requested a refund of unearned fees. As of April 27, 2004, respondent had not earned any portion of the \$5,000.00 paid as advanced fees by Bott. Respondent received notice of Bott's request for a refund of unearned fees soon after it was made, but failed to refund any portion of the \$5,000.00 to Bott.
3. On September 7, 2007, Bott sent a letter to respondent again requesting a refund of the \$5,000.00 in unearned fees. Soon thereafter, respondent received the September 7, 2007 letter, but failed to refund any portion of the \$5,000.00 to Bott.
4. It was not until March 24, 2008, and only after the State Bar became involved in the matter, that respondent refunded \$5,000.00 in unearned fees to Bott.

Conclusions of Law

By failing to refund \$5,000.00 in unearned fees to Bott for approximately four years after Bott first requested a refund, respondent failed to promptly refund unearned fees in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Case No. 10-O-04549 (The Rogers matter)

Facts

1. On May 29, 2007, respondent was hired by Brenda and James Rogers ("the Rogers") to represent them with planning/zoning issues against the city of South Lake Tahoe. At the time of hire, respondent knew that the Rogers had not exhausted their administrative remedies on the planning/zoning issues. Respondent also knew that the Rogers were not time-barred from pursuing administrative remedies. However, instead of taking any action to pursue administrative remedies on behalf of the Rogers, respondent filed a civil complaint in the matter, *Rogers v. City of South Lake Tahoe*, El Dorado Superior Court Case No. SC20080086 ("civil matter").
2. Thereafter, the defendants in the civil matter filed a demurrer to the complaint based on respondent's failure to state a cause of action. Respondent then filed a first amended complaint, second amended complaint and third amended complaint in the civil matter. The defendants filed demurrers to each amended complaint based on respondent's failure to state a cause of action. On April 17, 2009, the court in the civil matter sustained the defendant's demurrer to the third amended complaint without leave to amend based on respondent's failure to state a cause of action.

4. On April 29, 2009, the Rogers sent a letter to respondent terminating his services and requesting return of their client file. Soon thereafter, respondent received the April 29, 2009 letter and returned a portion of the client file to Rogers. At that time, respondent failed to return the entire client file to the Rogers.

5. It was not until November 2010, that respondent returned the entire client file to the Rogers.

Conclusions of Law

1. By failing to take any action to pursue administrative remedies on behalf of the Rogers, and by failing to state a cause of action in the complaint and the first, second and third amended complaints, which resulted in the loss of his clients' case, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By failing to promptly return the entire client file to the Rogers, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property in willful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to on page two, paragraph A (7) was November 22, 2010.

STATE BAR ETHICS SCHOOL

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the State Bar has informed respondent that as of November 22, 2010, the estimated prosecution costs in this matter are approximately \$3,840.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(ii). Respondent's five counts of misconduct represent multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES

Standard 1.2(e)(i). Respondent has been practicing law since 1988, and has no prior record of discipline.

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Standard 1.2(e)(iv). Respondent suffered from extreme difficulties in his personal life which expert testimony would establish were directly responsible for the misconduct and have since been resolved. During the time of the misconduct, respondent was in the midst of a divorce. Respondent has since resolved these issues.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the disciplinary proceedings.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.

SUPPORTING AUTHORITY

Standard 2.4(b) requires a reproof or suspension for a respondent who has wilfully failed to perform services for which he was retained.

Standard 2.10 requires that a violation of any provision of the Rules of Professional Conduct not specified in the standards (e.g., rules 3-700(D)(1) and 3-700(D)(2)) shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Generally, discipline for failing to perform ranges from reproof to suspension. (See *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32 [one-year stayed suspension for abandonment in single client matter; no prior record of discipline]; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 [six-month stayed suspension for abandonment in single client matter; no prior record of discipline].) Likewise, multiple failures to refund unearned fees have resulted in actual suspensions. (See, e.g., *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907 [90 days' actual suspension for misconduct including failure to perform, failure to refund unearned fees and moral turpitude; no prior record of discipline].)

Based respondent's extensive mitigation, which outweighs the one aggravating circumstance, a stayed suspension with a two-year probationary period will meet the purposes of attorney discipline.


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In the Matter of Jordan Morgenstern	Case number(s): 10-O-00070 [10-O-00071; 10-O-00077; 10-O-04549]
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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 Fact, Conclusions of Law and Disposition.

12/3/10
Date




Respondent's Signature

Jordan Morgenstern

Print Name

12/6/10
Date



Respondent's Counsel Signature

Carol Langford

Print Name

12/9/10
Date



Deputy Trial Counsel's Signature

Susan I. Kagan

Print Name

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In the Matter Of JORDAN RICHARD MORGENSTERN SBN 134046	Case Number(s): 10-O-00070
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ORDER

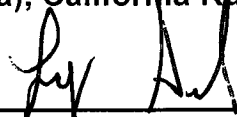
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 135(b), 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.)**

December 16, 2010

Date



Lucy Armendariz
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 December 16, 2010, 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 San Francisco, California, addressed as follows:

**CAROL LANGFORD
100 PRINGLE AVE #570
WALNUT CREEK, CA 94596**

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

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 16, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court