



1 Cantor failed to notify the State Bar of the disbarment in California as  
2 required by SCR 114(1).

## 3 **II. BACKGROUND**

### 4 **1. Jurisdiction:**

5 Cantor was admitted to practice law in Nevada in September 1978. Cantor  
6 is subject to the jurisdiction of this Court. Cantor was also admitted to practice  
7 law in California in June 1978. His CA Bar Number is 79851.

### 8 **2. Disciplinary History Leading up to Disbarment:**

#### 9 **a. Reciprocal Discipline, California Case No. 16-J-10765-CV**

10 On September 29, 2015, the Nevada Supreme Court entered an Order  
11 Approving Conditional Guilty Plea imposing a six month and one day  
12 suspension, stayed, with one year probation for violations of ten Rules of  
13 Professional Conduct (RPC).<sup>4</sup>

14 Shortly thereafter, Cantor's Nevada mentor reported to SBN that he had  
15 concerns with Cantor's handling of trust funds. Cantor admitted to a shortfall in  
16 the trust account of \$37,000. A probation breach hearing was held before the  
17 Southern Nevada Disciplinary Board on April 15, 2016. The panel recommended  
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20 <sup>4</sup> *In the Matter of Discipline of Scott M. Cantor, Bar No. 1713*, Nevada Supreme Court Case No. 68044.

1 extension of the underlying suspension from 6 months to three years; an audit of  
2 the trust account with repayment of deficiency within 90 days; a new mentor; and  
3 implementation and use of accounting and case management system; and submit  
4 quarterly reports.

5 On November 23, 2016, the Nevada Supreme Court entered an order  
6 approving the panel recommendation.<sup>5</sup>

7 As a result of Nevada's first stayed suspension and probation, Calbar filed  
8 Notice of Disciplinary Charges on December 5, 2016.<sup>6</sup> Attached to the  
9 Disciplinary Charges were copies of the Nevada Supreme Court order filed  
10 March 19, 2015, and the Conditional Guilty Plea filed on March 19, 2015 and the  
11 Findings of Fact, Conclusions of Law and Recommendation filed April 14, 2015.  
12 See **Exhibit 3**.

13 On January 18, 2017, Cantor through his attorney, David S, Kestenbaum  
14 filed an Answer to the Notice of Disciplinary Charges. **Ex. 3**.

15 On May 2, 2017, Stipulation regarding Facts, Conclusions of Law and  
16 Disposition and Order Approving Actual Suspension was entered. Cantor was  
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19 <sup>5</sup> *In the Matter of Scott M. Cantor*, Supreme Court of Nevada, Case No. 70937.

20 <sup>6</sup> *In the Matter of Scott Michael Cantor*, State Bar Court of California, Case No.  
16-J-10765-CV (California Supreme Court Case No. S242702).

1 ordered to comply with the State Bar Act and Rules of Professional Conduct  
2 during the probation period. Cantor was to contact the Office of Probation and  
3 schedule a meeting with the probation deputy to discuss the terms and conditions,  
4 which included submitting quarterly reports; taking and passing the Multistate  
5 Professional Responsibility Examination (MPRE); attending Ethics School and  
6 pass the test or complete six (6) hours of live in person or live online continuing  
7 legal education (CLE) courses. **Ex. 3.**

8 The California Supreme Court entered an order on September 5, 2017,  
9 suspending Cantor for one year stayed suspension with 60 days actual suspension  
10 and one year probation. **Ex. 3.**

11 **b. Violation of California Order and Probation Conditions, State**  
12 **Bar Court Case No. SBC-19-O-30065 (Calbar Case No. 18-O-**  
**17275)**

13 Cantor failed to contact the probation department. A letter was sent to him  
14 asking him to schedule a meeting. Cantor did so but failed to attend the meeting  
15 he scheduled for November 13, 2017, stating his computers crashed. The meeting  
16 was rescheduled. However, Cantor failed to file two quarterly and one final  
17 report.

18 As such, on February 20, 2019, Calbar filed a Notice of Disciplinary  
19 Charges charging Cantor with violating of Business and Professions Code (BPC)  
20 Section 6068(k) by failing to: contact Office of Probation to schedule a meeting



1 with Probation officer to discuss terms and conditions of probation; submit two  
2 written quarterly reports; submit final quarterly report; provide proof of passage  
3 of MPRE; and either attend Ethics School or take six CLE credits.<sup>7</sup> **See Exhibit**  
4 **4.**

5 On March 19, 2019, Cantor filed an Answer to the Disciplinary Charges.  
6 **Ex. 4.**

7 On July 3, 2019, Stipulation of Facts, Conclusions of Law and Disposition  
8 and Order Approving Actual Suspension were entered. The recommended  
9 discipline was two years suspension stayed with one year suspension actual and  
10 two years' probation. Cantor was ordered to read and review the California RPC  
11 and BPC and provide a declaration that he did so; comply with the State Bar Act  
12 and Rules of Professional Conduct during the probation period; and maintain a  
13 current address with Calbar. Cantor was to contact the Office of Probation and  
14 schedule a meeting with the probation deputy to discuss the terms and conditions,  
15 which included submitting quarterly and final reports. The State Bar Court  
16 retained jurisdiction during the probationary period. The requirements of Ethics

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20 <sup>7</sup> *In the Matter of Scott M. Cantor*, State Bar Court of California, Case No. 19-  
O-30065.

1 School and the MRPE were not included in this order as Cantor did not reside in  
2 California. **Ex. 4.**

3 As a result, Cantor was suspended for two years, stayed, with an additional  
4 two years' probation.

5 On October 10, 2019, California Supreme Court suspended Cantor for two  
6 years, stayed, subject to the condition that Cantor be suspended for the first year  
7 of his two-year probation. Cantor was warned that failure to comply with  
8 California Rules of the Court, Rule 9.20 may result in disbarment or suspension.<sup>8</sup>

9 **Ex. 4.**

10 Cantor failed to report this suspension to SBN as required by SCR 114.

11 **c. Violation of California Order and Probation Conditions, State**  
12 **Bar Court Case Nos. SBC-20-N-30251 and SBC-20-O-30252**  
**(consol.)**

13 Once again, Cantor failed to comply.

14 On April 20, 2020, Calbar filed amended charges in Case No. SBC-20-N-  
15 30251 due to Cantor's failure to file a declaration consistent with Rule 9.20. **Ex.**

16 **2.**

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20 <sup>8</sup> *In re Scott Michael Cantor*, Supreme Court of California, Case No. S257331  
(State Bar Court No. SBC-19-O-30065).

1 Also on April 20, 2020, Calbar filed amended charges in case no. SBC-20-  
2 N-30252 for failure to meet with a probation specialist to discuss the terms and  
3 conditions and failed to submit a quarterly report, a violation of BPC section  
4 6068(k). Calbar filed amended disciplinary charges on April 20, 2020, in Case  
5 No. SBC-20-N-30252. **Ex. 1.**

6 Cantor, in proper person, filed responsive pleadings in both matters on  
7 June 8, 2020.

8 These two cases were consolidated on June 9, 2020. A Zoom trial was  
9 held on August 21, 2020. Cantor appeared and participated in the trial.

10 **Findings of Fact and Conclusion of Law:**

11 On October 30, 2020, the State Bar Court entered its Decision and Order  
12 of Involuntary Inactive Enrollment. The following were detailed in the Decision.

13 **Ex. 1.**

14 **Count One-Failure to Obey Rules 9.20 (SBC-20-N-30251).**

15 Rule 9.20(c) states that disbarred, resigned, or suspended attorney is to  
16 notify clients, opposing counsel or adverse parties of pending litigation of the  
17 change of status. A copy of the notice is to be filed with the court, agency, or  
18 tribunal of the pending litigation. Proof of compliance with Rule 9.20 and the  
19 disciplinary order is to be filed with the State Bar Court.

20 Cantor was to file the proof of compliance by December 19, 2019 and

1 failed to do so.

2 **Count One-Failure to Comply with Probation (SBC-20-O-30252).**

3 BPC 6068(k) states that an attorney has the duty to comply with all  
4 conditions of a disciplinary probation.

5 Cantor willfully failed to comply with the conditions imposed by Supreme  
6 Court order No. S257331 (State Bar Case SBC-19-O-30065) as follows:

- 7 1. Failure to contact the probation office within 15 days to schedule a  
8 meeting with his probation specialist.
- 9 2. Failed to meet with probation deputy.
- 10 3. Failed to submit the January 10, 2020 quarterly report.
- 11 4. Failed to submit a declaration that he read the California RPCs and  
12 sections of the Business and Professions Code.

13 **Violations.**

14 Respondent was found to have violated:

- 15 • Count One – BPC<sup>9</sup> 36068(k) (Duty to comply with all conditions  
16 attached to disciplinary probation). Nevada’s comparable rule is  
17 RPC 3.4(c) (Fairness to opposing party and counsel: knowingly  
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20 <sup>9</sup> A copy of the relevant California Rule and BPC are attached at **Exhibit 5**.

1 disobey an obligation under rules of tribunal) and RPC 8.4  
2 (Misconduct).

- 3 • Count Two –Rule 9.20 (c) (Duties of Disbarred, resigned, or  
4 suspended attorneys). Nevada’s comparable rules are SCR 115  
5 (Notice of change in license status; winding down of practice)  
6 and RPC 3.4(c) (Fairness to opposing party and counsel:  
7 knowingly disobey an obligation under rules of tribunal).

8 **Aggravating/Mitigating Circumstances.**

9 The following aggravating factors were found:

- 10 1. Prior discipline.
- 11 2. Multiple acts of misconduct.
- 12 3. Uncharged Misconduct.

13 The following mitigating factors were found.

- 14 1. Extreme Emotional Distress.
- 15 2. Candor and Cooperation.

16 **Discipline.**

17 The State Bar Court ordered Cantor be disbarred from the practice of law  
18 and involuntarily enrolled as an inactive member. The Supreme Court upheld  
19 the recommendation in its order entered March 1, 2021. **Ex. 1.**

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1                   **d. Failure to report the CA Disbarment to Nevada.**

2                   Cantor failed to notify the State Bar of the California disbarment. It came  
3 to the State Bar's attention during the investigation of another matter. Once the  
4 State Bar received notice of Cantor's discipline in California, it notified Cantor,  
5 who did not respond. See email to Cantor attached hereto as **Exhibit 6**.

6                   **III. STATEMENT OF THE LAW**

7                   SCR 114(4) provides for the imposition of the identical discipline imposed  
8 by another jurisdiction provided it has been demonstrated the proceedings were  
9 not lacking in due process, lacking of proof, the misconduct warrants  
10 substantially different discipline under the standards of Nevada or the misconduct  
11 does not violate any of the Nevada Rules of Professional Conduct. Upon such a  
12 showing, the discipline shall conclusively establish the misconduct and warrants  
13 imposition of discipline in the State. *See* SCR114(5).

14                  In the prior discipline matter, Cantor stipulated to the facts. He  
15 acknowledged that conditions were imposed and failed to comply with the terms  
16 which subjected him to further disciplinary action.

17                  Cantor responded to the notice of disciplinary charges. Cantor participated  
18 in disciplinary process by stipulating to facts. A hearing was held before the State  
19 Bar Court with Cantor present. Calbar duly gave Cantor notice, the opportunity  
20 to respond and dispute the charges. Calbar presented evidence and met its burden

1 of proof. The Calbar process was fair.

#### 2 **IV. ABA STANDARDS ANALYSIS**

3 The American Bar Association Standards for Imposing Lawyer Sanctions  
4 suggest an analysis of four factors to be considered in determining an appropriate  
5 disciplinary sanction: (1) the duty violated (to a client, the public, the legal  
6 system, and/or the legal profession); (2) the lawyer's mental state (negligent,  
7 knowing, or intentional; (3) the actual or potential injury or serious injury caused  
8 by the lawyer's misconduct; and (4) the existence of aggravating or mitigating  
9 factors. *See* ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, Standard 3.0  
10 (2014); *see also, In re Lerner*, 124 Nev. 1232, 197 P.3d 1067 (Nev. 2008).

11 **Duties and Violation:** Cantor violated his duties to the profession by  
12 failing to comply with disciplinary orders and by failing to participate in his  
13 California probation.

14 **Mental State:** The California State Bar Court found Cantor acted  
15 'willfully' in failing to comply with Rule 9.20. Nevada does not use a willful  
16 standard. Cantor's failure to follow the rule and Supreme Court orders show an  
17 intentional mental state.

18 Cantor acted with an intentional mental state by disregarding the terms of  
19 his probation and the disciplinary process. Cantor knew the terms of his  
20

1 probation when he signed the stipulation of original discipline. He chose not to  
2 act, not once but twice.

3 **Injury:** Cantor caused potential harm to the public or legal system if he  
4 had California clients or cases, which he did not.

5 There is also actual injury caused when an attorney fails to participate in  
6 the disciplinary process, in this case probation condition, or fails to obey a  
7 disciplinary order. As a self-regulating profession it is imperative that each  
8 attorney take the process seriously or the primary purpose of attorney discipline,  
9 to protect the public, cannot be carried out.

10 As such, ABA discipline standard 8.1 applies. “Disbarment is generally  
11 appropriate when a lawyer (a) intentionally or knowingly violates the terms of a  
12 prior disciplinary order and such violation causes injury or potential injury to a  
13 client, the public, the legal system, or the profession.”

## 14 **V. CONCLUSION**

15 A review of the record demonstrates the disciplinary proceedings held in  
16 California were not lacking in notice or opportunity to be heard or due process,  
17 nor lacking in establishment of proof, nor would the misconduct warrant  
18 substantially different discipline under the standards of Nevada.

19 Additionally, the conduct that is the subject of the discipline in Nevada  
20 clearly violates provisions of the Nevada Rules of Professional Conduct.



1 Finally, after applying the appropriate baseline and aggravating factors,  
2 disbarment is appropriate in this matter and is consistent with the discipline  
3 sanction imposed in California.

4 WHEREFORE, Bar Counsel respectfully brings this matter to the Court's  
5 attention in accordance with SCR 114.

6 DATED this 5 day of November 2021.

7 STATE BAR OF NEVADA  
8 DANIEL M. HOOGE, BAR COUNSEL

*Bruce Hahn*

9  
10 \_\_\_\_\_  
11 Bruce C. Hahn, Asst. Bar Counsel  
12 Nevada Bar No. 5011  
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14 Las Vegas, Nevada 89102  
15 Attorney for Petitioner  
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Scott Michael Cantor, Esq.  
c/o Thomas Francis Pitaro, Esq.  
601 Las Vegas Blvd. South  
Las Vegas, NV 89101  
Email: [pitaro@gmail.com](mailto:pitaro@gmail.com)

Dated this 5<sup>th</sup> day of November 2021.

An Employee of the State Bar of Nevada

# **EXHIBIT 1**

# **EXHIBIT 1**

(State Bar Court Nos. SBC-20-N-30251; SBC-20-O-30252 (Consolidated))

**S266635**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re SCOTT MICHAEL CANTOR on Discipline

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The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, 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 this order.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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**CANTIL-SAKAUYE**  
*Chief Justice*

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of **MAR 01 2021** 20\_\_\_\_

By: \_\_\_\_\_

Month

Deputy

**FILED**

**OCT 30 2020**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case Nos. SBC-20-N-30251;
	)	SBC-20-O-30252
SCOTT MICHAEL CANTOR,	)	(Consolidated)-YDR
	)	
State Bar No. 79851.	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
	)	

**I. Introduction**

In this disciplinary matter, Scott Michael Cantor (Respondent) is charged by the Office of Chief Trial Counsel of the State Bar of California (OCTC) with willfully violating California Rules of Court, rule 9.20 (rule 9.20) and Business and Professions Code section 6068, subdivision (k). Specifically, in case No. SBC-20-N-30251, OCTC charged that by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), Respondent failed to comply with the provisions of the Supreme Court order in case No. S257331. In case No. SBC-20-O-30252, OCTC alleges that Respondent failed to comply with the probationary conditions ordered by the Supreme Court order in the same case by: (1) failing to attest that he has read the California Rules of Professional Conduct and certain sections of the Business and Professions Code; (2) failing to timely schedule a meeting with his probation specialist; (3) failing to timely participate in a meeting with his assigned probation specialist; and (4) failing to submit to the Office of Probation a quarterly report due on or before January 10, 2020.

After consideration of the evidence, the court finds Respondent culpable, by clear and convincing evidence, of willfully violating his probation conditions and by failing to file a rule 9.20(c) declaration of compliance. In view of Respondent's misconduct, the evidence in aggravation, and his limited mitigation, the court recommends to the Supreme Court that Respondent be disbarred from the practice of law.

## **II. Pertinent Procedural History**

On April 13, 2020, OCTC filed and properly served on Respondent, at his official records address, two separate Notice of Disciplinary Charges (NDCs) in State Bar Court case Nos. SBC-20-N-30251 and SBC-20-O-30252. On April 20, 2020, OCTC filed First Amended NDCs in both matters. Respondent filed responses to the First Amended NDCs on June 8, 2020, and the two matters were consolidated on June 9, 2020. Due to the Covid-19 pandemic, this trial took place on August 21, 2020, via Zoom, pursuant to California Rules of Court, Emergency Rule 3, adopted by the Judicial Council and effective April 6, 2020.<sup>1</sup> This case was taken under submission for decision on September 4, 2020.<sup>2</sup>

OCTC was represented at trial by Deputy Trial Counsel Joseph Silvos III. Respondent appeared in propria persona.

## **III. Findings of Fact and Conclusions of Law**

The following findings of fact are based on Respondent's responses to the First Amended NDCs and the documentary and testimonial evidence admitted at trial.

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<sup>1</sup> On August 7, 2020, OCTC filed a motion to exclude Respondent's witnesses and documents pursuant to rule 5.101(B) and 5.101.1(B) due to Respondent's failure to file and serve a pretrial conference statement as ordered. OCTC's motion was granted August 21, 2020, but Respondent was still permitted to testify on his own behalf.

<sup>2</sup> The parties were to file closing argument briefs within two weeks of the conclusion of trial, or by Friday, September 4, 2020. OCTC timely filed its closing argument brief. Respondent submitted a pleading styled Memorandum Re Mitigation after hours on September 4, 2020. Consequently, it was not actually filed until September 8, 2020. Although Respondent's brief was filed late, the court still accepted and considered it.

## **Jurisdiction**

Respondent was admitted to the practice of law in California on June 23, 1978, and has been an attorney of the State Bar of California at all times since that date.

## **Facts**

### **Case Nos. SBC-20-N-30251 & SBC-20-O-30252**

On July 3, 2019, the Hearing Department of the State Bar Court filed and served upon Respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension in State Bar Court case No. SBC-19-O-30065<sup>3</sup> (Order Approving Stipulation).

On October 10, 2019, the California Supreme Court filed and transmitted order No. S257331 (State Bar Court case No. SBC-19-O-30065), which ordered Respondent suspended from the practice of law for a period of two years stayed and Respondent was placed on probation for two years. The Supreme Court ordered Respondent actually suspended for the first year of his probation and he was subject to the conditions of probation as recommended by the Hearing Department in its order approving the stipulation. In addition, the Supreme Court required Respondent to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 calendar days (on or before December 9, 2019) and 40 calendar days (on or before December 19, 2019), respectively, after the effective date of the Supreme Court's order. The Supreme Court order became effective on November 9, 2019. Respondent was warned that failure to comply with the rule 9.20 requirement may result in disbarment or suspension.

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<sup>3</sup> Both of the First Amended NDCs contain a minor typographical error – identifying this matter as case No. SBC-19-O-30068.

Respondent did not comply with the rule 9.20 requirements ordered by the California Supreme Court.

On October 24, 2019, the State Bar of California Office of Probation (Probation) uploaded a letter to Respondent's "My State Bar Profile" page. Probation sent Respondent notice of the uploaded letter via email to his State Bar official email address. Respondent received the email. The letter outlined the due dates for compliance with the State Bar Court probation conditions.

The Hearing Department Order Approving Stipulation recommended, and the Supreme Court approved, the following requirements as part of Respondent's probation:

Within 30 days of the effective date of the Supreme Court order, Respondent must declare, under penalty of perjury, that he read the California Rules of Professional Conduct and specific Business and Professions Code sections and provide the declaration to Probation with his first quarterly report (due January 10, 2020);

Within 15 days after the effective date of the Supreme Court order (on or before November 24, 2019), Respondent must schedule a meeting with his assigned probation specialist; and within 30 days after the effective date of the Supreme Court order (on or before December 9, 2019), Respondent must participate in a meeting with his probation specialist; and

Respondent must comply with the State Bar Act and Rules of Professional Conduct and provide written quarterly reports demonstrating said compliance no later than January 10, April 10, July 10, and October 10 within the probation period. Respondent's first quarterly report was due on January 10, 2020.

Respondent did not meet any of the aforementioned State Bar Court probation requirements ordered by the Hearing Department and the Supreme Court.

On January 24, 2020, Probation emailed a non-compliance letter to Respondent's State Bar official records email address. The letter detailed that Respondent: (1) failed to schedule the required meeting with Probation on or before November 24, 2019; (2) failed to hold the required meeting with Probation on or before December 9, 2019; (3) failed to provide a declaration that he reviewed the Rules of Professional Conduct and Business and Professions Code within 30



days of the Supreme Court order and file a declaration stating he complied with that requirement with his first quarterly report; and (4) failed to file his first quarterly report due by January 10, 2020. With the non-compliance letter, Probation included its October 24, 2019 reminder letter. Probation also sent a copy of the non-compliance letter to Respondent's State Bar official records address. The letter came back "return to sender." Respondent subsequently failed to file his quarterly reports due April 10 and July 10, 2020.<sup>4</sup>

As of the date of trial, Respondent still had not submitted a rule 9.20 affidavit.

### **Conclusions of Law**

#### **Case No. SBC-20-N-30251**

##### *Count 1: Failure to Obey Rule 9.20 [California Rules of Court, Rule 9.20(c)]*

An attorney ordered by the Supreme Court to comply with rule 9.20(c) must file an affidavit with the Clerk of the State Bar Court, within 40 days after the effective date of the Supreme Court's order. This affidavit must show that the attorney has fully complied with the provisions of rule 9.20. Respondent was required to file his rule 9.20 affidavit no later than December 19, 2019. Respondent did not file an affidavit of compliance within the time that he was required to do so; and, at the time of trial, Respondent still had not filed an affidavit of compliance.

Respondent did not specifically explain why he failed to comply with the Supreme Court's order regarding rule 9.20(c), but he generally contends that for the last three years he has failed to address the charges against him because he was experiencing depression and financial

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<sup>4</sup> Neither of these failures to timely file quarterly reports were alleged in the First Amended NDC, but, as noted below, they do constitute uncharged misconduct.

troubles. Respondent's failure to file a rule 9.20(c) affidavit constitutes a willful violation of rule 9.20.<sup>5</sup>

**Case No. SBC-20-O-30252**

*Count 1: Failure to Comply With Probation (Bus. & Prof. Code, § 6068, Subd. (k))*

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

As discussed above, Respondent failed to comply with his probation conditions as ordered by the Supreme Court in order No. S257331 (State Bar Court case No. SBC-19-O-30065), in willful violation of section 6068, subdivision (k), by: (1) failing to contact the Office of Probation within 15 days after the effective date of discipline to schedule a meeting with his assigned probation specialist; (2) failing to meet with his probation deputy, (3) failing to timely submit his January 10, 2020 quarterly report; and (4) failing to submit a declaration stating that he had read the California Rules of Professional Conduct and certain sections of the Business and Professions Code.

Respondent's failure to comply with these probation conditions is a willful violation of Business and Professions Code section 6068, subdivision (k).

**IV. Aggravating and Mitigating Circumstances**

**A. Aggravation**

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

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<sup>5</sup> A willful failure to comply with a rule 9.20 obligation relates to one's intent that an act be done or omitted. (See *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.)

### **Prior Record of Discipline (Std. 1.5(a).)**

As set forth below, Respondent has two prior records of discipline in State Bar Court case Nos. 16-J-10756 and SBC-19-O-30065. The court assigns substantial weight to Respondent's prior record of discipline, especially considering that the present misconduct mirrors the misconduct in Respondent's second discipline. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarity between prior and current misconduct shows lack of rehabilitation and renders previous discipline more serious aggravation].)

On September 5, 2017, the Supreme Court issued order No. S242702 (State Bar Court case No. 16-J-10756) suspending Respondent from the practice of law for one year, stayed, with one-year probation, including a sixty-day actual suspension. In this matter, Respondent stipulated to culpability involving attorney misconduct in another jurisdiction, i.e., the State of Nevada. Respondent's Nevada misconduct involved three client matters and equated to violating the following California rules/statutes: (1) failing to perform legal services with competence; (2) receiving illegal fees, (3) failure to support all laws, (4) failure to inform a client of significant developments, and (5) failure to obey a court order. In aggravation, Respondent committed multiple acts of misconduct, failed to make restitution, and had previously received a private reprimand in the State of Nevada. In mitigation, Respondent cooperated with the State Bar by entering into a pretrial stipulation.

On October 10, 2019, the Supreme Court issued order No. S257331 (State Bar Court case No. SBC-19-O-30065) suspending Respondent from the practice of law for two years, stayed, with two years' probation, including a one-year actual suspension. In this matter, Respondent stipulated to culpability involving violating the terms of his State Bar probation. Specifically, Respondent failed to timely contact the Office of Probation to set up a meeting and failed to file three quarterly reports. In aggravation, Respondent committed multiple acts of misconduct and

had a prior record of discipline. In mitigation, Respondent cooperated with the State Bar by stipulating to culpability and discipline.

**Multiple Acts of Misconduct (Std. 1.5(b).)**

Standard 1.5(b) provides that aggravating circumstances include “multiple acts of wrongdoing.” Respondent’s failure to comply with rule 9.20 and four probation violations constitute multiple acts of misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 529 [failure to timely file two probation reports and cooperate with probation monitor constituted multiple acts of misconduct].) However, considering that all of Respondent’s misconduct stems from his failure to comply with a single Supreme Court order, the court assigns this factor modest weight in aggravation. (*In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 653 [attorney’s rule 9.20 violation and two probation violations warranted modest weight in aggravation].)

**Uncharged Misconduct (Std. 1.5(h).)**

Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the “evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was based on [the respondent’s] own testimony. . . .” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.) Here, Respondent stipulated to two additional probation violations, i.e., failing to file his quarterly reports due on April 10 and July 10, 2020. Respondent’s admitted failure to file his April 10 and July 10, 2020 quarterly reports constitute additional violations of section 6068, subdivision (k). Accordingly, this uncharged misconduct warrants moderate consideration in aggravation.

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## **B. Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311; std. 1.6.)

### **Extreme Emotional Difficulties (Std. 1.6(d).)**

Respondent asserts that he should receive mitigation for extreme emotional difficulties. However, the only evidence offered by Respondent at trial in mitigation was his testimony regarding physical and emotional difficulties he experienced between January 2017 and July 29, 2020. According to Respondent, in late July 2020, he was first prescribed medication for his anxiety and panic attacks and, as a result of the medication, his anxiety is lessening but he is still experiencing the panic attacks, the frequency and severity of which has diminished. While the court found Respondent's testimony regarding his difficulties to be credible, his testimony is neither "established by expert testimony as directly responsible for the misconduct" nor establishes by "clear and convincing evidence that the difficulties or disabilities no longer pose a risk that the lawyer will commit misconduct." (See std. 1.6(d).) As such, Respondent is not afforded any mitigation credit for extreme emotional or physical difficulties.

### **Candor and Cooperation (Std. 1.6(e).)**

Respondent entered into a comprehensive stipulation regarding undisputed facts and an admission of documents. While Respondent did not specifically stipulate to culpability, he did stipulate that he had failed to satisfy multiple probation conditions, saving court time and resources. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation given to those who admit culpability and facts].) The stipulated facts, however, were easily provable in this matter, as they only involved probation and rule 9.20 violations. (See *In the Matter of Bouyer* (Review Dept. 1998) 3 Cal. State Bar Ct.

Rptr. 888, 891.) Considering the comprehensive nature of the stipulation but taking into account that the facts would have been relatively easy to prove, Respondent's candor and cooperation warrants moderate consideration in mitigation.

**Lack of Harm (Std. 1.6(c).)**

Respondent asserts that he should receive mitigation for lack of harm to clients, the public, and the administration of justice. In making this argument, Respondent contends that he hasn't practiced law in California in several years. This assertion has some merit considering that Respondent had no California clients, opposing parties, or courts to notify. (Contra, *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 331 [court declined to assign mitigation based on lack of harm noting that concerned parties protected by rule 9.20 include not only clients, but also co-counsel, opposing counsel, adverse parties, and tribunal in which matter is pending].) That said, this is the second time in the past couple years that Respondent's failure to comply with rudimentary probation conditions has caused the expenditure of OCTC and State Bar Court resources, thereby impacting the administration of justice. Accordingly, the court declines to assign any weight in mitigation for lack of harm.

**V. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Std. 1.3.) Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

The standard for assessing discipline for a violation of rule 9.20 is set out in the rule itself. Rule 9.20(d) states, in pertinent part: "A suspended [attorney's] willful failure to comply

with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation.” Respondent’s willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered to be the appropriate sanction. (See e.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Standard 1.8(b) also applies here. Standard 1.8(b) provides that disbarment is appropriate in instances where the attorney has had two or more prior records of discipline, including a period of actual suspension, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. This is Respondent’s third disciplinary matter and neither of the two Standard 1.8(b) exceptions applies to Respondent. Moreover, while Respondent has demonstrated some mitigation, this showing does not come close to the level of “compelling mitigating circumstances” called for by standard 1.8(b), especially considering that Respondent’s mitigation is more than offset by the present aggravation.

As to the charged probation violations, the extent of the discipline to recommend in this matter is dependent, in part, on the nature of the probation violation and its relationship to Respondent’s prior misconduct. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The present matter represents the second time Respondent has failed to comply with the conditions of his disciplinary probation. Of even greater concern is Respondent’s failure to comply with some of the same probationary conditions he violated in his previous discipline, i.e., failing to timely contact his probation specialist and failing to file a quarterly report. As noted *ante*, the similarity between Respondent’s present and prior misconduct demonstrate his lack of rehabilitation. (*In the Matter of Gadda*, *supra*, 4 Cal. State Bar Ct. Rptr. 416, 443- 444.)

The court also looks to the case law and finds *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, to be instructive. In *Esau*, the attorney, who had been previously disciplined on three occasions,<sup>6</sup> violated rule 9.20 by filing his compliance declaration 104 days late. In aggravation, the Review Department cited the attorney's prior record of discipline and his failure to comply with his prior terms of probation. In mitigation, the attorney entered into a pretrial stipulation. He also received minimal weight in mitigation for the testimony of his three character witnesses, as well as his own testimony regarding his community service and pro bono activities.<sup>7</sup> Noting that the attorney's apparent lack of concern for his license to practice law demonstrated that he was not a candidate for further disciplinary probation, the Review Department recommended his disbarment.

The present matter shares many similarities with *Esau*. Like the attorney in *Esau*, Respondent's first discipline involved misconduct in another jurisdiction – granted Respondent's misconduct was more extensive and resulted in 60-day actual suspension rather than a private reproof. In addition, both Respondent and the attorney in *Esau* failed to comply with rule 9.20 and twice violated their probation/reproof conditions.<sup>8</sup> Moreover, neither matter involved extensive mitigation. Accordingly, this court sees little reason to deviate from the level of discipline recommended in *Esau*.

All in all, Respondent's failure to comply with his probationary conditions and the Supreme Court ordered rule 9.20 requirements, viewed in conjunction with his prior disciplinary

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<sup>6</sup> The attorney in *Esau* was originally privately reproofed based on discipline he received in another state. He subsequently failed to comply with conditions attached to his private reproof and he was placed on a stayed suspension. Thereafter, he failed to comply with some of his probation conditions, and he was suspended for six months.

<sup>7</sup> The Review Department rejected the attorney's assertion of extreme emotional difficulties because there was no expert evidence supporting his claims.

<sup>8</sup> Contrary to the present matter, the attorney in *Esau* belatedly filed his 9.20 affidavit. One other distinction between the two cases is that the present matter involves two prior disciplines, while *Esau* involved three – the first being a private reproof.



records, his lack of compelling mitigation, and the presence of aggravating circumstances, leads this court to conclude that the sanction of disbarment is both appropriate and necessary.

## **VI. Recommendations**

The court recommends that Scott Michael Cantor be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

### **California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>9</sup>

### **Costs**

It is further recommended that the Supreme Court order that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.<sup>10</sup>

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<sup>9</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

<sup>10</sup> The court does not recommend the imposition of monetary sanctions as all the charged misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [the rules of statutory construction apply when interpreting the Rules of Procedure of the State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent an express retroactivity provision in the statute or clear extrinsic sources of intended retroactive application, a statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of a

## ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Respondent Scott Michael Cantor is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October 29, 2020

**Yvette D. Roland**

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YVETTE D. ROLAND  
Judge of the State Bar Court

## CERTIFICATE OF ELECTRONIC SERVICE

[Rules Proc. of State Bar, interim rule 5.26.1; Code Civ. Proc., § 1013b, subds. (a)-(b)]

I, the undersigned, certify that I am a Court Specialist 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, on October 30, 2020, I electronically served a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT


by electronic transmission on that date to the following:

SCOTT MICHAEL CANTOR  
[scantorlaw@gmail.com](mailto:scantorlaw@gmail.com)

JOSEPH A. SILVOSO, III  
[joseph.silvoso@calbar.ca.gov](mailto:joseph.silvoso@calbar.ca.gov)

I hereby certify that the foregoing is true and correct.

Date: October 30, 2020

  
Carpenter, Angela  
Court Specialist  
State Bar Court of California  
845 S. Figueroa St.  
Los Angeles, CA 90017

**FILED**

**6/8/2020**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

SCOTT MICHAEL CANTOR  
SBN 79851  
1412 Sun Copper Drive  
Las Vegas, Nevada 89117  
Tel: 702-525-1223

**STATE BAR COURT OF THE STATE OF CALIFORNIA**

**HEARING DEPARTMENT- LOS ANGELES**

**IN THE MATTER OF:**

**OCTC Case No. 20-N-02344**

**SCOTT M. CANTOR,  
SBN 79851,**

**RESPONSE TO NOTICE OF  
DISCIPLINARY CHARGES**

**A MEMBER OF THE STATE BAR**

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Respondent Scott Michael Cantor responds to the Notice of Disciplinary Charges as follows:

1. Respondent admits that he was admitted to the practice of law in the State of California on June 23, 1978, and was a licensed attorney at all times pertinent to the charges and is currently a licensed attorney, of the State Bar of California.

**COUNT 1**

2. Respondent admits in part and denies in part, the allegations contained therein. Respondent admits that a true and correct copy of the California Supreme Court Order and Stipulation in re Facts, Conclusions of Law and Disposition and

1 Order Approving Actual Suspension in State Bar Court case number SBC-19-O-  
2 30068, are attached to the Notice of Disciplinary Charges as Exhibit 1 and  
3 affirmatively alleges that his subsequent conduct constitutes mistake, inadvertence,  
4 neglect or error that does not rise to the level of willful misconduct.  
5

6 **FIRST AFFIRMATIVE DEFENSE**

7 The Notice of Disciplinary Charges fails to State facts sufficient to constitute  
8 basis for discipline.  
9

10 **SECOND AFFIRMATIVE DEFENSE**

11 The Notice of Disciplinary Charges contains inappropriate, unnecessary and  
12 immaterial, duplicative charges. Bates v. State Bar (1990) 51 Cal.3d 1056, 1060.  
13

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Fifth Amendment Privilege against Self-Incrimination.  
16

17 **FOURTH AFFIRMATIVE DEFENSE**

18 The facts on which some or all of the Notice of Disciplinary Charges are based  
19 constitute mistake, inadvertence, neglect or error that do not rise to the level of willful  
20 misconduct.  
21

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Respondent objects to Notice of Disciplinary Charges on the grounds that the  
24 allegations therein are intertwined with legal conclusions and are compound.

25 WHEREFORE, respondent prays that the court find that respondent did not  
26  
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1 commit acts constituting professional misconduct, and that the Notice of Disciplinary  
2 Charges be dismissed.  
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4 Dated this 8<sup>th</sup> day of June, 2020.  
5

6  
7 BY: /s/ Scott Michael Cantor

8 SCOTT MICHAEL CANTOR  
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3 **PROOF OF SERVICE**

4 I certify that on June 8, 2020 I served the foregoing document(s) described as  
5 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES** the interested parties  
6 in this action as follows:

7  
8 [ X ] by placing [ ] the original [ X ] a true copy thereof enclosed in sealed  
9 enveloped addressed as follows:

10 State Bar of California  
11 Office of the Chief Trial Counsel  
12 845 South Figueroa Street  
13 Los Angeles, California 90017-2515

14 [X] **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed  
15 as above, and placing it for collection and mailing following ordinary  
16 business practices. I am readily familiar with the firm's practice of  
17 collection and processing correspondence, pleadings and other matters for  
18 mailing with the United States Postal Service on that same day with  
19 postage thereon fully prepaid at Van Nuys, California in the ordinary  
20 course of business. I am aware that on a motion of the party served,  
21 service is presumed invalid if the postal cancellation date or postage meter  
22 date is more than one day after the date of this mailing affidavit.

23 [ ] **BY FAX:** I transmitted a copy of the foregoing document(s) this date via  
24 facsimile to the numbers shown above.

25 BY PERSONAL SERVICE: I personally delivered such envelope by hand  
26 [X] to the person name on this service list.

27 [X] [State] I declare under penalty of perjury under the laws of the  
28 State of California that the foregoing is true and  
correct.

Executed June 8, 2020 at Las Vegas, NV.

/s/ Scott Michael Cantor

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# Public Matter

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
KELLY MCNAMARA, No. 214997  
SUPERVISING ATTORNEY  
JOSEPH A. SILVOSO, III, No. 248502  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1247

**FILED**  
**4/20/2020** *yps*  
**STATE BAR COURT**  
**CLERK'S OFFICE**  
**LOS ANGELES**

THE STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of: ) Case No. SBC-20-N-30251  
)  
SCOTT MICHAEL CANTOR, ) **[FIRST AMENDED] NOTICE OF**  
State Bar No. 79851, ) **DISCIPLINARY CHARGES**  
)  
) (OCTC Case No. 20-N-02344)  
An Attorney of the State Bar )

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

///

///

///

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott Michael Cantor ("respondent") was admitted to the practice of law in the State  
4 of California on June 23, 1978. Respondent was a licensed attorney at all times pertinent to  
5 these charges, and is currently a licensed attorney of the State Bar of California.

6 COUNT 1

7 Case No. 20-N-02344  
8 California Rules of Court, Rule 9.20  
[Failure to Obey Rule 9.20]

9 2. Respondent failed to file a declaration of compliance with California Rules of Court,  
10 rule 9.20 in conformity with the requirements of Rule 9.20(c) with the clerk of the State Bar  
11 Court by October 10, 2019, as required by Supreme Court order in Case no. S257331, in willful  
12 violation of California Rules of Court, rule 9.20. (True and correct copies of the California  
13 Supreme Court order and Stipulation re Facts, Conclusions of Law and Disposition and Order  
14 Approving Actual Suspension in State Bar Court Case no. SBC-19-O-30068 are attached hereto  
15 as Exhibit 1 and is incorporated by reference.)

16 **NOTICE - INACTIVE ENROLLMENT!**

17 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
18 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
19 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
20 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
21 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
**INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE**  
**ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
**RECOMMENDED BY THE COURT.**

22 **NOTICE - COST ASSESSMENT!**

23 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**  
24 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**  
25 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**  
26 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**  
27 **PROFESSIONS CODE SECTION 6086.10.**

**NOTICE – MONETARY SANCTION!**

**IN THE EVENT THIS MATTER RESULTS IN ACTUAL  
SUSPENSION, DISBARMENT, OR RESIGNATION WITH  
CHARGES PENDING, YOU MAY BE SUBJECT TO THE PAYMENT  
OF A MONETARY SANCTION NOT TO EXCEED \$5,000 FOR EACH  
VIOLATION, TO A MAXIMUM OF \$50,000 PER DISCIPLINARY  
ORDER, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
SECTION 6086.13. SEE RULE 5.137, RULES OF PROCEDURE OF  
THE STATE BAR OF CALIFORNIA.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: April 20, 2020

By: /s/ Joseph A. Silvos III

Joseph A. Silvos, III  
Deputy Trial Counsel  
State Bar license number 248502

## EXHIBIT 1

SUPREME COURT  
FILED

OCT 10 2019

(State Bar Court No. SBC-19-O-30065)

Jorge Navarrete Clerk

S257331

Deputy

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SCOTT MICHAEL CANTOR on Discipline

The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first one year of probation;
2. Respondent must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 3, 2019; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of **OCT 10 2019** 20

By:   
Deputy

**CANTIL-SAKAUYE**

Chief Justice

RECEIVED

OCT 15 2019

CENTRAL ADMINISTRATION

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel for the State Bar</b>  <b>Joseph A. Silvoso III</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1247</b>  <b>State Bar # 248502</b>	<b>Case Number(s):</b> <b>SBC-19-O-30065</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <i>ps</i>  <b>JUL - 3 2019</b>            STATE BAR COURT            CLERK'S OFFICE            LOS ANGELES         </div>	
<b>Counsel For Respondent</b>  <b>David S. Kestenbaum</b> <b>14401 Sylvan Street, Suite 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>State Bar # 85228</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> <b>SCOTT M. CANTOR</b>  <b>State Bar # 79851</b>  <b>(Respondent)</b>			

**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 an attorney 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 are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective March 15, 2019)

Actual Suspension

- (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. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's annual fees for each of the following years:  
  
If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline:**
- (a) ☒ State Bar Court case # of prior case: **State Bar Court case no. 16-J-10756-CV. See Exhibit 1, 20 pages.**
  - (b) ☒ Date prior discipline effective: **October 5, 2017**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Respondent was found culpable of former Rules of Professional Conduct and State Bar Act violations based on another jurisdiction's record of discipline pursuant to Business and Professions Code section 6049.1 (See pages 12-13 and Exhibit 1, p. 7-14)**
  - (d) ☒ Degree of prior discipline: **60 days of actual suspension, one year stayed suspension, and one year probation.**
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(Do not write above this line.)

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- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 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 likely to recur.
- (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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.



- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 resulting from circumstances which were not reasonably foreseeable or were beyond Respondent's control and were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:**

Pre-Trial Stipulation, see page 13.

**D. Recommended Discipline:**

- (1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **one year** of the period of Respondent's probation.

- (2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3) ☐ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

(Do not write above this line.)

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

(Do not write above this line.)

- a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

(Do not write above this line.)

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Respondent must provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official State Bar Record Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.



- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☐ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) ☒ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **respondent agreed to attend State Bar Ethics School or participate in six hours of Minimum Continuing Legal Education (MCLE) Courses in lieu of State Bar Ethics School (because he resides outside of California) as part of his prior disciplinary proceeding (Exhibit 1). See In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7.**
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact

(Do not write above this line.)

must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1) ☐ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☒ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because **respondent agreed to attend, take, and pass the Multistate Professional**

**Responsibility Examination as part of his prior disciplinary proceeding (Exhibit 1). In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**

- (3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension. In addition, Respondent must also comply with the probation condition at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT M. CANTOR

CASE NUMBER:                          SBC-19-30065

**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. 18-O-17275 (State Bar Investigation)**

**FACTS:**

1. On May 2, 2017, the State Bar Court Hearing Department filed and served upon respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension; in State Bar Court Case No. 16-J-10756 (Order Approving Stipulation).

2. On September 5, 2017, the California Supreme Court filed and transmitted Order No. S242702 (Order) which suspended respondent from the practice of law for a period of one year (the Court stayed the execution of that suspension), suspended respondent for 60 days of actual suspension, placed him on probation for a period of one year. The Order also subjected respondent to the conditions of probation as recommended by the Hearing Department in its Order Approving Stipulation. Respondent's probation became effective on October 5, 2017.

3. The Supreme Court and the Hearing Department ordered respondent to comply with certain conditions of probation, but he failed to do so as set forth below.

4. The Supreme Court required respondent, within 30 days from the effective date of discipline (on or before November 4, 2017), to contact the Office of Probation (Probation) and schedule a meeting with his assigned Probation deputy to discuss the terms and conditions of probation. The Order also required respondent to meet with Probation upon the direction of the Probation deputy in-person or by telephone.

5. On September 27, 2017, Probation emailed respondent informing him that they uploaded, to his State Bar Profile, a copy of his probation letter. The letter outlined the terms and conditions of respondent's probation.

6. Respondent failed to contact Probation on or before November 4, 2017.

7. On November 6, 2017, Probation sent a letter to respondent informing him that he failed to schedule the required meeting.

8. On November 9, 2017, respondent called Probation to schedule the meeting.



9. Probation provided respondent with a meeting date of November 13, 2017, and instructed respondent to call a specified number at 1:00 pm.

10. Respondent failed to call Probation on November 13, 2017, at 1:00 pm.

11. The next day respondent contacted Probation, stated he missed the meeting because the computers at his office crashed, and rescheduled the meeting to November 16, 2017 at 4:00 pm. The meeting took place on November 16, 2017 at 4:00 pm.

12. The Hearing Department ordered respondent to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to Probation on January 10, 2018, April 10, 2018, and July 10, 2018, (quarterly reports) and file a final report on or before October 5, 2018.

13. Respondent failed to file quarterly reports for April 10, 2018, and July 10, 2018 and failed to provide a final report on or before October 5, 2018.

#### **CONCLUSION OF LAW:**

14. Respondent's multiple violations of the terms and conditions of his probation constitute an intentional violation of Business and Professions Code section 6068(k).

#### **AGGRAVATING CIRCUMSTANCES.**

##### **Prior Record of Discipline:**

Respondent's most recent record of discipline was in State Bar Case No. 16-J-10756 (Supreme Court Case No. S242702). The pending case, and subject of this stipulation, resulted from probation violations for that matter.

Respondent's prior record of discipline stemmed from a Nevada matter involving three consolidated cases (Nevada State Bar Case numbers SG10-0429 (the Safi Matter), SG11-1139 (the Bermudez Matter), and SG11-1330 (the Alfano Matter)). The Nevada case concluded in respondent entering into a conditional plea to facts and admissions to violations of Nevada Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1, and 8.4. Respondent's misconduct in Nevada was the California equivalent of:

- Former Rules of Professional Conduct, rule 3-110(A) [failure to perform].
- Former Rules of Professional Conduct, rule 4-200(A) [receipt of illegal fees].
- Business and Professions Code section 6068(a) [failure to uphold laws].
- Business and Professions Code section 6068(m) [failure to inform client of significant developments].
- Business and Professions Code section 6103 [disobedience of a court order].

In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds.

In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint

Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition.

In the Alfano Matter, respondent acted as the administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code. Respondent then received illegal fees for his work as an administrator. Respondent also failed to perform legal services by failing to file a First and Final Accounting.

As aggravation in the prior California case, respondent stipulated to a prior record of discipline (discussed below), multiple acts of wrongdoing, and failure to make restitution.

The State Bar considered respondent's stipulation as mitigation.

Respondent's recent California disciplinary proceeding resulted in one year stayed suspension, one year probation, and 60 days actual suspension.

Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the documents.

Respondent's first record of discipline resulted in a private reprimand from the State Bar of Nevada in Grievance File #89-138-406 on January 25, 1990. Respondent temporarily misplaced two casino chips entrusted to him by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safe keep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the former California Rules of Professional Conduct. Respondent received no discipline in California for the Nevada private reprimand.

Due to the remoteness in time (the violation occurred in 1983), level of discipline respondent received from the State Bar of Nevada (private reprimand), and the fact that the California State Bar did not move forward with disciplinary proceedings in the 1990 matter, respondent's 1990 Nevada disciplinary proceeding provides minimal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to timely schedule his meeting with Probation and he failed to attend the first scheduled meeting with Probation. He failed to file his April 10, 2018, and July 10, 2018, quarterly reports and his final report on or before October 5, 2018. Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept.2002) 4 Cal. State Bar Ct. Rptr. 498, 555; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [when attorney commits multiple violations of same condition, gravity of each successive violation increases].)

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial stipulation:** By entering into a pretrial stipulation, thereby saving the State Bar and the State Bar Court time and resources, respondent is entitled to mitigation. (See *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].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.14 provides, “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent outright and repeatedly failed to comply with a number of conditions of his probation. He untimely scheduled his meeting with Probation and missed his initial meeting with Probation following the effective date of his discipline. He failed to submit two quarterly reports and failed to provide his final report.

Furthermore, Standard 1.8(a) requires that, “[i]f a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silverton*, *supra*, 36 Cal. 4th at p. 92.) Respondent’s repeated misconduct is not remote because the violations of his probation terms occurred soon after the effective date of his probation and continued to occur. Moreover, respondent’s conduct is not minor because the repeat violations tend to show his indifference to the discipline to which he agreed.

In determining the appropriate level of discipline under the standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) Two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate. Case law supports this result.

In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one year suspension, stayed, including a 60 day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

In *the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, the State Bar moved to revoke Tiernan's probation for failure to cooperate with his probation monitor and file timely quarterly reports. Tiernan had four prior records of discipline. The probation Tiernan violated stemmed from a lack of communication with clients and resulted in 60 days of actual suspension. While Tiernan ultimately completed the terms of his probation, the court found further aggravation for multiple acts of misconduct for his failures to timely comply with probation. The Review Department imposed 11 months of actual suspension.

In each of the forgoing cases the Courts increased the respondents' level of discipline from the underlying matter. In the present case, respondent's misconduct was worse than Conroy and Tiernan's. They all completed their probation requirements, albeit late. Respondent failed to file two of his quarterly reports and his final report. And while he participated in his meeting with Probation, he did so late and after he failed to attend the first scheduled meeting.

Respondent's recent record of discipline resulted in one year stayed suspension, one year probation, and 60 days actual suspension, coupled with his failure to take action in his probation, significant discipline pursuant to Standard 1.8(a) is required. Respondent, through his own inaction, demonstrated a failure to grasp the importance of strict compliance with his probation conditions.

On balance, and in light of the aggravating circumstances, and lack of mitigating circumstances (save entering into this stipulation), two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

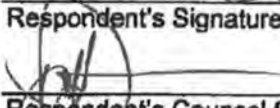
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 28, 2019, the discipline costs in this matter are \$3985. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: <b>SCOTT M. CANTOR</b>	Case Number(s): <b>SBC-19-O-30065</b>
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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.

<u>6-6-19</u> Date	 Respondent's Signature	<u>Scott M. Cantor</u> Print Name
<u>6-10-19</u> Date	 Respondent's Counsel Signature	<u>David S. Kestenbaum</u> Print Name
<u>6/10/19</u> Date	 Deputy Trial Counsel's Signature	<u>Joseph A. Silvoso, III</u> Print Name

(Do not write above this line.)

In the Matter of: SCOTT M. CANTOR	Case Number(s): SBC-19-O-30065
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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.

1. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph E.(14) recommending compliance with the probation condition "Proof of Compliance with Rule 9.20 Obligations."
2. On page 11 of the Stipulation, at the top of the page, "SBC-19-30065" is deleted, and in its place is inserted "SBC-19-O-30065".
3. On page 11 of the Stipulation, at numbered paragraph 3, "The Supreme Court and the Hearing Department ordered" is deleted, and in its place is inserted "The Hearing Department recommended, and the Supreme Court ordered".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date July 2, 2019

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court



ORIGINAL

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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b> <b>PUBLIC MATTER</b>		
<b>Counsel For The State Bar</b>  Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182  Bar # 281574	<b>Case Number(s):</b> 16-J-10788-CV	<b>For Court use only</b>  <b>FILED</b> <b>MAY 02 2017</b> <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>  <b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED
<b>Counsel For Respondent</b>  David Kestenbaum Kestenbaum Law Group, APC 14401 Sylvan St., Ste. 100 Van Nuys, CA 91401 (818) 616-4312  Bar # 85228		
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  Bar # 79851  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 June 23, 1978.
- (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.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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(Effective July 1, 2016)

Actual Suspension

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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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.



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- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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

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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:**

**Pretrial Stipulation, see attachment, page 14.**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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 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:
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                          16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.

2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").

3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.

4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.

5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.

6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.

7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.

8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.



23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.

35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.



46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon

respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low



end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
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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.

<u>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.

1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

Date

May 2, 2017

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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:

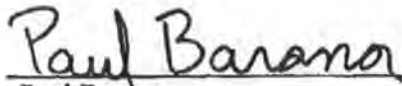
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court

# DECLARATION OF SERVICE

CASE NUMBER(s): **SBC-20-N-30251**

(OCTC Case No. 20-N-02344)

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, sandra.jones@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

## FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: **9414-7266-9904-2111-0054-98** at Los Angeles, addressed to: (see below)



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: \_\_\_\_\_ addressed to: (see below)

Person Served	Business Address via U.S. Certified Mail:	Fax Number	Courtesy Copy via U.S. First-Class Mail to:
<b>Scott Michael Cantor</b>	<b>Scott Michael Cantor Scott Michael Cantor, Ltd. 410 S Rampart Blvd Ste. 390 Las Vegas, NV 89145-5749</b>		<b>Scott Michal Cantor, Ltd 1412 Sun Copper Dr. Las Vegas NV 89117</b>
		Electronic Address	

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: April 20, 2020

SIGNED: /s/ Kathi Palacios

Kathi Palacios  
Declarant

# Public Matter

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
KELLY MCNAMARA, No. 214997  
SUPERVISING ATTORNEY  
JOSEPH A. SILVOSO, III, No. 248502  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1247

**FILED**

4/13/2020 *ups*

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

SCOTT MICHAEL CANTOR,  
State Bar No. 79851,

An Attorney of the State Bar

) Case No.

**SBC-20-N-30251**

) NOTICE OF DISCIPLINARY CHARGES

) (OCTC Case No. 20-N-02344)

## **NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott Michael Cantor ("respondent") was admitted to the practice of law in the State  
4 of California on June 23, 1978. Respondent was a licensed attorney at all times pertinent to  
5 these charges, and is currently a licensed attorney of the State Bar of California.

6 COUNT 1

7 Case No. 20-N-02344  
8 California Rules of Court, Rule 9.20  
[Failure to Obey Rule 9.20]

9 2. Respondent failed to file a declaration of compliance with California Rules of Court,  
10 rule 9.20 in conformity with the requirements of Rule 9.20(c) with the clerk of the State Bar  
11 Court by October 10, 2019, as required by Supreme Court order in Case no. S257331, in willful  
12 violation of California Rules of Court, rule 9.20. (True and correct copies of the California  
13 Supreme Court order and Stipulation re Facts, Conclusions of Law and Disposition and Order  
14 Approving Actual Suspension in State Bar Court Case no. SBC-19-O-30068 are attached hereto  
15 as Exhibit 1 and is incorporated by reference.)

16 **NOTICE - INACTIVE ENROLLMENT!**

17 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
18 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
19 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
20 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
21 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
**INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE**  
**ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
**RECOMMENDED BY THE COURT.**

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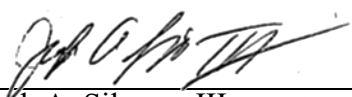
**NOTICE - COST ASSESSMENT!**

**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: 4/13/2020

By:   
Joseph A. Silvoso, III  
Deputy Trial Counsel

## EXHIBIT 1

SUPREME COURT  
FILED

OCT 10 2019

(State Bar Court No. SBC-19-O-30065)

Jorge Navarrete Clerk

S257331

Deputy

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SCOTT MICHAEL CANTOR on Discipline

The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first one year of probation;
2. Respondent must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 3, 2019; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of **OCT 10 2019** 20

By:   
Deputy

**CANTIL-SAKAUYE**

Chief Justice

RECEIVED

OCT 15 2019

CENTRAL ADMINISTRATION

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel for the State Bar  <b>Joseph A. Silvoso III</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1247</b>  State Bar # 248502	Case Number(s): <b>SBC-19-O-30065</b>	For Court use only   <div style="text-align: center;"> <b>FILED</b>  <i>ps</i>  <b>JUL - 3 2019</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>	
Counsel For Respondent  <b>David S. Kestenbaum</b> <b>14401 Sylvan Street, Suite 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  State Bar # 85228	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: <b>SCOTT M. CANTOR</b>  State Bar # 79851  (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 an attorney 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 are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective March 15, 2019)

Actual Suspension



- (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. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's annual fees for each of the following years:  
  
If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline:**
- (a) ☒ State Bar Court case # of prior case: **State Bar Court case no. 16-J-10756-CV. See Exhibit 1, 20 pages.**
  - (b) ☒ Date prior discipline effective: **October 5, 2017**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Respondent was found culpable of former Rules of Professional Conduct and State Bar Act violations based on another jurisdiction's record of discipline pursuant to Business and Professions Code section 6049.1 (See pages 12-13 and Exhibit 1, p. 7-14)**
  - (d) ☒ Degree of prior discipline: **60 days of actual suspension, one year stayed suspension, and one year probation.**
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(Do not write above this line.)

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- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 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 likely to recur.
- (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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.

- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 resulting from circumstances which were not reasonably foreseeable or were beyond Respondent's control and were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:**

Pre-Trial Stipulation, see page 13.

**D. Recommended Discipline:**

- (1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **one year** of the period of Respondent's probation.

- (2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3) ☐ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

(Do not write above this line.)

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

(Do not write above this line.)

- a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**



(Do not write above this line.)

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Respondent must provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official State Bar Record Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☐ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) ☒ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **respondent agreed to attend State Bar Ethics School or participate in six hours of Minimum Continuing Legal Education (MCLE) Courses in lieu of State Bar Ethics School (because he resides outside of California) as part of his prior disciplinary proceeding (Exhibit 1). See In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7.**
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact

(Do not write above this line.)

must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in **SELECT ONE** \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1) ☐ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☒ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because **respondent agreed to attend, take, and pass the Multistate Professional**



**Responsibility Examination as part of his prior disciplinary proceeding (Exhibit 1). In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**

- (3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension. In addition, Respondent must also comply with the probation condition at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT M. CANTOR

CASE NUMBER:                          SBC-19-30065

**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. 18-O-17275 (State Bar Investigation)**

**FACTS:**

1. On May 2, 2017, the State Bar Court Hearing Department filed and served upon respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension; in State Bar Court Case No. 16-J-10756 (Order Approving Stipulation).

2. On September 5, 2017, the California Supreme Court filed and transmitted Order No. S242702 (Order) which suspended respondent from the practice of law for a period of one year (the Court stayed the execution of that suspension), suspended respondent for 60 days of actual suspension, placed him on probation for a period of one year. The Order also subjected respondent to the conditions of probation as recommended by the Hearing Department in its Order Approving Stipulation. Respondent's probation became effective on October 5, 2017.

3. The Supreme Court and the Hearing Department ordered respondent to comply with certain conditions of probation, but he failed to do so as set forth below.

4. The Supreme Court required respondent, within 30 days from the effective date of discipline (on or before November 4, 2017), to contact the Office of Probation (Probation) and schedule a meeting with his assigned Probation deputy to discuss the terms and conditions of probation. The Order also required respondent to meet with Probation upon the direction of the Probation deputy in-person or by telephone.

5. On September 27, 2017, Probation emailed respondent informing him that they uploaded, to his State Bar Profile, a copy of his probation letter. The letter outlined the terms and conditions of respondent's probation.

6. Respondent failed to contact Probation on or before November 4, 2017.

7. On November 6, 2017, Probation sent a letter to respondent informing him that he failed to schedule the required meeting.

8. On November 9, 2017, respondent called Probation to schedule the meeting.

9. Probation provided respondent with a meeting date of November 13, 2017, and instructed respondent to call a specified number at 1:00 pm.

10. Respondent failed to call Probation on November 13, 2017, at 1:00 pm.

11. The next day respondent contacted Probation, stated he missed the meeting because the computers at his office crashed, and rescheduled the meeting to November 16, 2017 at 4:00 pm. The meeting took place on November 16, 2017 at 4:00 pm.

12. The Hearing Department ordered respondent to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to Probation on January 10, 2018, April 10, 2018, and July 10, 2018, (quarterly reports) and file a final report on or before October 5, 2018.

13. Respondent failed to file quarterly reports for April 10, 2018, and July 10, 2018 and failed to provide a final report on or before October 5, 2018.

#### **CONCLUSION OF LAW:**

14. Respondent's multiple violations of the terms and conditions of his probation constitute an intentional violation of Business and Professions Code section 6068(k).

#### **AGGRAVATING CIRCUMSTANCES.**

##### **Prior Record of Discipline:**

Respondent's most recent record of discipline was in State Bar Case No. 16-J-10756 (Supreme Court Case No. S242702). The pending case, and subject of this stipulation, resulted from probation violations for that matter.

Respondent's prior record of discipline stemmed from a Nevada matter involving three consolidated cases (Nevada State Bar Case numbers SG10-0429 (the Safi Matter), SG11-1139 (the Bermudez Matter), and SG11-1330 (the Alfano Matter)). The Nevada case concluded in respondent entering into a conditional plea to facts and admissions to violations of Nevada Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1, and 8.4. Respondent's misconduct in Nevada was the California equivalent of:

- Former Rules of Professional Conduct, rule 3-110(A) [failure to perform].
- Former Rules of Professional Conduct, rule 4-200(A) [receipt of illegal fees].
- Business and Professions Code section 6068(a) [failure to uphold laws].
- Business and Professions Code section 6068(m) [failure to inform client of significant developments].
- Business and Professions Code section 6103 [disobedience of a court order].

In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds.

In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint

Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition.

In the Alfano Matter, respondent acted as the administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code. Respondent then received illegal fees for his work as an administrator. Respondent also failed to perform legal services by failing to file a First and Final Accounting.

As aggravation in the prior California case, respondent stipulated to a prior record of discipline (discussed below), multiple acts of wrongdoing, and failure to make restitution.

The State Bar considered respondent's stipulation as mitigation.

Respondent's recent California disciplinary proceeding resulted in one year stayed suspension, one year probation, and 60 days actual suspension.

Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the documents.

Respondent's first record of discipline resulted in a private reprimand from the State Bar of Nevada in Grievance File #89-138-406 on January 25, 1990. Respondent temporarily misplaced two casino chips entrusted to him by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safe keep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the former California Rules of Professional Conduct. Respondent received no discipline in California for the Nevada private reprimand.

Due to the remoteness in time (the violation occurred in 1983), level of discipline respondent received from the State Bar of Nevada (private reprimand), and the fact that the California State Bar did not move forward with disciplinary proceedings in the 1990 matter, respondent's 1990 Nevada disciplinary proceeding provides minimal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to timely schedule his meeting with Probation and he failed to attend the first scheduled meeting with Probation. He failed to file his April 10, 2018, and July 10, 2018, quarterly reports and his final report on or before October 5, 2018. Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept.2002) 4 Cal. State Bar Ct. Rptr. 498, 555; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [when attorney commits multiple violations of same condition, gravity of each successive violation increases].)

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial stipulation:** By entering into a pretrial stipulation, thereby saving the State Bar and the State Bar Court time and resources, respondent is entitled to mitigation. (See *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].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.14 provides, “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent outright and repeatedly failed to comply with a number of conditions of his probation. He untimely scheduled his meeting with Probation and missed his initial meeting with Probation following the effective date of his discipline. He failed to submit two quarterly reports and failed to provide his final report.

Furthermore, Standard 1.8(a) requires that, “[i]f a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silverton*, *supra*, 36 Cal. 4th at p. 92.) Respondent’s repeated misconduct is not remote because the violations of his probation terms occurred soon after the effective date of his probation and continued to occur. Moreover, respondent’s conduct is not minor because the repeat violations tend to show his indifference to the discipline to which he agreed.

In determining the appropriate level of discipline under the standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) Two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate. Case law supports this result.



In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one year suspension, stayed, including a 60 day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

In *the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, the State Bar moved to revoke Tiernan's probation for failure to cooperate with his probation monitor and file timely quarterly reports. Tiernan had four prior records of discipline. The probation Tiernan violated stemmed from a lack of communication with clients and resulted in 60 days of actual suspension. While Tiernan ultimately completed the terms of his probation, the court found further aggravation for multiple acts of misconduct for his failures to timely comply with probation. The Review Department imposed 11 months of actual suspension.

In each of the forgoing cases the Courts increased the respondents' level of discipline from the underlying matter. In the present case, respondent's misconduct was worse than Conroy and Tiernan's. They all completed their probation requirements, albeit late. Respondent failed to file two of his quarterly reports and his final report. And while he participated in his meeting with Probation, he did so late and after he failed to attend the first scheduled meeting.

Respondent's recent record of discipline resulted in one year stayed suspension, one year probation, and 60 days actual suspension, coupled with his failure to take action in his probation, significant discipline pursuant to Standard 1.8(a) is required. Respondent, through his own inaction, demonstrated a failure to grasp the importance of strict compliance with his probation conditions.

On balance, and in light of the aggravating circumstances, and lack of mitigating circumstances (save entering into this stipulation), two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 28, 2019, the discipline costs in this matter are \$3985. 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: <b>SCOTT M. CANTOR</b>	Case Number(s): <b>SBC-19-O-30065</b>
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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.

<u>6-6-19</u> Date	 Respondent's Signature	<u>Scott M. Cantor</u> Print Name
<u>6-10-19</u> Date	 Respondent's Counsel Signature	<u>David S. Kestenbaum</u> Print Name
<u>6/10/19</u> Date	 Deputy Trial Counsel's Signature	<u>Joseph A. Silvoso, III</u> Print Name

(Do not write above this line.)

In the Matter of: SCOTT M. CANTOR	Case Number(s): SBC-19-O-30065
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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.

1. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph E.(14) recommending compliance with the probation condition "Proof of Compliance with Rule 9.20 Obligations."
2. On page 11 of the Stipulation, at the top of the page, "SBC-19-30065" is deleted, and in its place is inserted "SBC-19-O-30065".
3. On page 11 of the Stipulation, at numbered paragraph 3, "The Supreme Court and the Hearing Department ordered" is deleted, and in its place is inserted "The Hearing Department recommended, and the Supreme Court ordered".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date July 2, 2019

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court



ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b> <b>PUBLIC MATTER</b>		
<b>Counsel For The State Bar</b>  Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182  Bar # 281574	<b>Case Number(s):</b> 16-J-10788-CV	<b>For Court use only</b>  <b>FILED</b> MAY 02 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES P.B.
<b>Counsel For Respondent</b>  David Kestenbaum Kestenbaum Law Group, APC 14401 Sylvan St., Ste. 100 Van Nuys, CA 91401 (818) 616-4312  Bar # 85228	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  Bar # 79851  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 June 23, 1978.
- (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.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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(Effective July 1, 2016)

Actual Suspension

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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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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

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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:**

**Pretrial Stipulation, see attachment, page 14.**

#### **D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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 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:
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.



**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                            16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.

2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").

3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.

4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.

5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.

6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.

7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.

8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.



23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.

35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.

46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.



68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon

respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)



(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
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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.

<u>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.

1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

Date

May 2, 2017

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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:

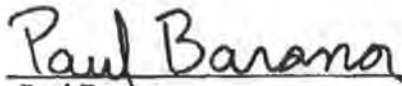
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court

## DECLARATION OF SERVICE

CASE NUMBER(s): **20-N-02344**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, [sandra.jones@calbar.ca.gov](mailto:sandra.jones@calbar.ca.gov), declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

### NOTICE OF DISCIPLINARY CHARGES



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



*(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



*(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 9414 7266 9904 2111 0101 95 at Los Angeles, addressed to: *(see below)*



*(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: *(see below)*

Person Served

Business Address via U.S. Certified Mail:

Fax Number

Courtesy Copy via U.S. First-Class Mail to:

Scott Michael Cantor

Scott Michael Cantor  
Scott Michael Cantor, Ltd.  
410 S Rampart Blvd Ste. 390  
Las Vegas, NV 89145-5749

Electronic Address

Scott Michal Cantor, Ltd  
1412 Sun Copper Dr.  
Las Vegas NV 89117

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

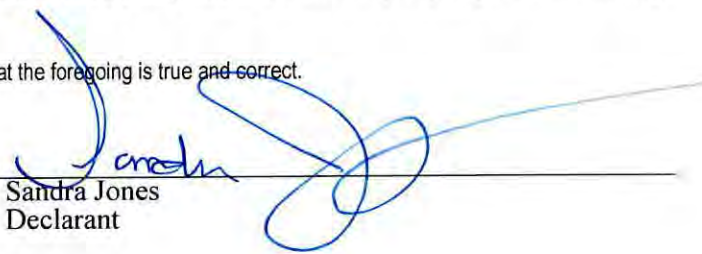
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: April 13, 2020

SIGNED:

  
Sandra Jones  
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST June 29, 2021

State Bar Court, State Bar of California,  
Los Angeles

By   
Clerk

# **EXHIBIT 2**

# **EXHIBIT 2**

# Public Matter

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
KELLY MCNAMARA, No. 214997  
SUPERVISING ATTORNEY  
JOSEPH A. SILVOSO, III, No. 248502  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1247

**FILED**  
**4/20/2020**  
**STATE BAR COURT**  
**CLERK'S OFFICE**  
**LOS ANGELES**

## THE STATE BAR COURT HEARING DEPARTMENT - LOS ANGELES

In the Matter of: ) Case No. SBC-20-O-30252  
)  
SCOTT MICHAEL CANTOR, ) **FIRST AMENDED NOTICE OF**  
State Bar No. 79851, ) **DISCIPLINARY CHARGES**  
)  
) (OCTC Case No. 20-O-02348)  
An Attorney of the State Bar )

### **NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

///

///

///

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott Michael Cantor ("respondent") was admitted to the practice of law in the State  
4 of California on June 23, 1978. Respondent was a licensed attorney at all times pertinent to  
5 these charges, and is currently a licensed attorney of the State Bar of California.

6 COUNT 1

7 Case No. 20-O-02348  
8 Business and Professions Code, section 6068(k)  
9 [Failure to Comply with Conditions of Probation]

10 2. Respondent failed to comply with conditions attached to respondent's disciplinary  
11 probation in State Bar Case no. SBC-19-O-30065 (True and correct copies of the Supreme  
12 Court's order in case number S257331 and Stipulation re Facts, Conclusions of Law and  
13 Disposition and Order Approving Actual Suspension in State Bar Court Case no. SBC-19-O-  
14 30068 are attached hereto as Exhibit 1 and is incorporated by reference) as follows, in willful  
15 violation of Business and Professions Code, section 6068(k):

- 16 A. Provide a declaration, under penalty of perjury, attesting that respondent read the  
17 California Rules of Professional Conduct and certain sections of the Business and  
18 Professions Code with his first quarterly report;
- 19 B. Schedule a meeting with respondent's assigned probation specialist within 15  
20 days of the effective date of the Supreme Court order (Exhibit 1) imposing  
21 discipline;
- 22 C. Participate in a meeting with assigned probation case specialist to discuss  
23 probation terms within 30 days after the effective date of the Supreme Court's  
24 order (Exhibit 1); and
- 25 D. Submit a quarterly report to the Office of Probation no later than January 10,  
26 2020.



**NOTICE - INACTIVE ENROLLMENT!**

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.**

**NOTICE - COST ASSESSMENT!**

**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.**

**NOTICE – MONETARY SANCTION!**

**IN THE EVENT THIS MATTER RESULTS IN ACTUAL SUSPENSION, DISBARMENT, OR RESIGNATION WITH CHARGES PENDING, YOU MAY BE SUBJECT TO THE PAYMENT OF A MONETARY SANCTION NOT TO EXCEED \$5,000 FOR EACH VIOLATION, TO A MAXIMUM OF \$50,000 PER DISCIPLINARY ORDER, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.13. SEE RULE 5.137, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: April 20, 2020

By: /s/ Joseph A. Silvos III  
Joseph A. Silvos, III  
Deputy Trial Counsel  
State Bar license number 248502

## EXHIBIT 1

SUPREME COURT  
FILED

OCT 10 2019

(State Bar Court No. SBC-19-O-30065)

Jorge Navarrete Clerk

S257331

Deputy

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SCOTT MICHAEL CANTOR on Discipline

The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first one year of probation;
2. Respondent must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 3, 2019; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of **OCT 10 2019** 20

By:   
Deputy

**CANTIL-SAKAUYE**

Chief Justice

RECEIVED

OCT 15 2019

CENTRAL ADMINISTRATION

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel for the State Bar</b>  <b>Joseph A. Silvoso III</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1247</b>  <b>State Bar # 248502</b>	<b>Case Number(s):</b> <b>SBC-19-O-30065</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <i>ps</i>  <b>JUL - 3 2019</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
<b>Counsel For Respondent</b>  <b>David S. Kestenbaum</b> <b>14401 Sylvan Street, Suite 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>State Bar # 85228</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> <b>SCOTT M. CANTOR</b>  <b>State Bar # 79851</b>  <b>(Respondent)</b>			

**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 an attorney 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 are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective March 15, 2019)

Actual Suspension

- (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. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
- ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's annual fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline:**
- (a) ☒ State Bar Court case # of prior case: **State Bar Court case no. 16-J-10756-CV. See Exhibit 1, 20 pages.**
- (b) ☒ Date prior discipline effective: **October 5, 2017**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Respondent was found culpable of former Rules of Professional Conduct and State Bar Act violations based on another jurisdiction's record of discipline pursuant to Business and Professions Code section 6049.1 (See pages 12-13 and Exhibit 1, p. 7-14)**
- (d) ☒ Degree of prior discipline: **60 days of actual suspension, one year stayed suspension, and one year probation.**
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(Do not write above this line.)

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- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 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 likely to recur.
- (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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.

- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 resulting from circumstances which were not reasonably foreseeable or were beyond Respondent's control and were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:**

Pre-Trial Stipulation, see page 13.

**D. Recommended Discipline:**

- (1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **one year** of the period of Respondent's probation.

- (2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3) ☐ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.



(Do not write above this line.)

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:



(Do not write above this line.)

- a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

(Do not write above this line.)

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Respondent must provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official State Bar Record Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☐ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) ☒ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **respondent agreed to attend State Bar Ethics School or participate in six hours of Minimum Continuing Legal Education (MCLE) Courses in lieu of State Bar Ethics School (because he resides outside of California) as part of his prior disciplinary proceeding (Exhibit 1). See In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7.**
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact



(Do not write above this line.)

must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1) ☐ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☒ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because **respondent agreed to attend, take, and pass the Multistate Professional**

**Responsibility Examination as part of his prior disciplinary proceeding (Exhibit 1). In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**

- (3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension. In addition, Respondent must also comply with the probation condition at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT M. CANTOR

CASE NUMBER:                          SBC-19-30065

**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. 18-O-17275 (State Bar Investigation)**

**FACTS:**

1. On May 2, 2017, the State Bar Court Hearing Department filed and served upon respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension; in State Bar Court Case No. 16-J-10756 (Order Approving Stipulation).

2. On September 5, 2017, the California Supreme Court filed and transmitted Order No. S242702 (Order) which suspended respondent from the practice of law for a period of one year (the Court stayed the execution of that suspension), suspended respondent for 60 days of actual suspension, placed him on probation for a period of one year. The Order also subjected respondent to the conditions of probation as recommended by the Hearing Department in its Order Approving Stipulation. Respondent's probation became effective on October 5, 2017.

3. The Supreme Court and the Hearing Department ordered respondent to comply with certain conditions of probation, but he failed to do so as set forth below.

4. The Supreme Court required respondent, within 30 days from the effective date of discipline (on or before November 4, 2017), to contact the Office of Probation (Probation) and schedule a meeting with his assigned Probation deputy to discuss the terms and conditions of probation. The Order also required respondent to meet with Probation upon the direction of the Probation deputy in-person or by telephone.

5. On September 27, 2017, Probation emailed respondent informing him that they uploaded, to his State Bar Profile, a copy of his probation letter. The letter outlined the terms and conditions of respondent's probation.

6. Respondent failed to contact Probation on or before November 4, 2017.

7. On November 6, 2017, Probation sent a letter to respondent informing him that he failed to schedule the required meeting.

8. On November 9, 2017, respondent called Probation to schedule the meeting.

9. Probation provided respondent with a meeting date of November 13, 2017, and instructed respondent to call a specified number at 1:00 pm.

10. Respondent failed to call Probation on November 13, 2017, at 1:00 pm.

11. The next day respondent contacted Probation, stated he missed the meeting because the computers at his office crashed, and rescheduled the meeting to November 16, 2017 at 4:00 pm. The meeting took place on November 16, 2017 at 4:00 pm.

12. The Hearing Department ordered respondent to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to Probation on January 10, 2018, April 10, 2018, and July 10, 2018, (quarterly reports) and file a final report on or before October 5, 2018.

13. Respondent failed to file quarterly reports for April 10, 2018, and July 10, 2018 and failed to provide a final report on or before October 5, 2018.

#### **CONCLUSION OF LAW:**

14. Respondent's multiple violations of the terms and conditions of his probation constitute an intentional violation of Business and Professions Code section 6068(k).

#### **AGGRAVATING CIRCUMSTANCES.**

##### **Prior Record of Discipline:**

Respondent's most recent record of discipline was in State Bar Case No. 16-J-10756 (Supreme Court Case No. S242702). The pending case, and subject of this stipulation, resulted from probation violations for that matter.

Respondent's prior record of discipline stemmed from a Nevada matter involving three consolidated cases (Nevada State Bar Case numbers SG10-0429 (the Safi Matter), SG11-1139 (the Bermudez Matter), and SG11-1330 (the Alfano Matter)). The Nevada case concluded in respondent entering into a conditional plea to facts and admissions to violations of Nevada Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1, and 8.4. Respondent's misconduct in Nevada was the California equivalent of:

- Former Rules of Professional Conduct, rule 3-110(A) [failure to perform].
- Former Rules of Professional Conduct, rule 4-200(A) [receipt of illegal fees].
- Business and Professions Code section 6068(a) [failure to uphold laws].
- Business and Professions Code section 6068(m) [failure to inform client of significant developments].
- Business and Professions Code section 6103 [disobedience of a court order].

In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds.

In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint



Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition.

In the Alfano Matter, respondent acted as the administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code. Respondent then received illegal fees for his work as an administrator. Respondent also failed to perform legal services by failing to file a First and Final Accounting.

As aggravation in the prior California case, respondent stipulated to a prior record of discipline (discussed below), multiple acts of wrongdoing, and failure to make restitution.

The State Bar considered respondent's stipulation as mitigation.

Respondent's recent California disciplinary proceeding resulted in one year stayed suspension, one year probation, and 60 days actual suspension.

Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the documents.

Respondent's first record of discipline resulted in a private reprimand from the State Bar of Nevada in Grievance File #89-138-406 on January 25, 1990. Respondent temporarily misplaced two casino chips entrusted to him by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safe keep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the former California Rules of Professional Conduct. Respondent received no discipline in California for the Nevada private reprimand.

Due to the remoteness in time (the violation occurred in 1983), level of discipline respondent received from the State Bar of Nevada (private reprimand), and the fact that the California State Bar did not move forward with disciplinary proceedings in the 1990 matter, respondent's 1990 Nevada disciplinary proceeding provides minimal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to timely schedule his meeting with Probation and he failed to attend the first scheduled meeting with Probation. He failed to file his April 10, 2018, and July 10, 2018, quarterly reports and his final report on or before October 5, 2018. Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept.2002) 4 Cal. State Bar Ct. Rptr. 498, 555; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [when attorney commits multiple violations of same condition, gravity of each successive violation increases].)

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial stipulation:** By entering into a pretrial stipulation, thereby saving the State Bar and the State Bar Court time and resources, respondent is entitled to mitigation. (See *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].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.14 provides, “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent outright and repeatedly failed to comply with a number of conditions of his probation. He untimely scheduled his meeting with Probation and missed his initial meeting with Probation following the effective date of his discipline. He failed to submit two quarterly reports and failed to provide his final report.

Furthermore, Standard 1.8(a) requires that, “[i]f a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silverton*, *supra*, 36 Cal. 4th at p. 92.) Respondent’s repeated misconduct is not remote because the violations of his probation terms occurred soon after the effective date of his probation and continued to occur. Moreover, respondent’s conduct is not minor because the repeat violations tend to show his indifference to the discipline to which he agreed.

In determining the appropriate level of discipline under the standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) Two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate. Case law supports this result.

In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one year suspension, stayed, including a 60 day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

In *the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, the State Bar moved to revoke Tiernan's probation for failure to cooperate with his probation monitor and file timely quarterly reports. Tiernan had four prior records of discipline. The probation Tiernan violated stemmed from a lack of communication with clients and resulted in 60 days of actual suspension. While Tiernan ultimately completed the terms of his probation, the court found further aggravation for multiple acts of misconduct for his failures to timely comply with probation. The Review Department imposed 11 months of actual suspension.

In each of the forgoing cases the Courts increased the respondents' level of discipline from the underlying matter. In the present case, respondent's misconduct was worse than Conroy and Tiernan's. They all completed their probation requirements, albeit late. Respondent failed to file two of his quarterly reports and his final report. And while he participated in his meeting with Probation, he did so late and after he failed to attend the first scheduled meeting.

Respondent's recent record of discipline resulted in one year stayed suspension, one year probation, and 60 days actual suspension, coupled with his failure to take action in his probation, significant discipline pursuant to Standard 1.8(a) is required. Respondent, through his own inaction, demonstrated a failure to grasp the importance of strict compliance with his probation conditions.

On balance, and in light of the aggravating circumstances, and lack of mitigating circumstances (save entering into this stipulation), two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

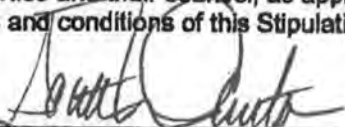
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 28, 2019, the discipline costs in this matter are \$3985. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: <b>SCOTT M. CANTOR</b>	Case Number(s): <b>SBC-19-O-30065</b>
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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.

<u>6-6-19</u> Date	 Respondent's Signature	<u>Scott M. Cantor</u> Print Name
<u>6-10-19</u> Date	 Respondent's Counsel Signature	<u>David S. Kestenbaum</u> Print Name
<u>6/10/19</u> Date	 Deputy Trial Counsel's Signature	<u>Joseph A. Silvoso, III</u> Print Name

(Do not write above this line.)

In the Matter of: SCOTT M. CANTOR	Case Number(s): SBC-19-O-30065
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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.

1. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph E.(14) recommending compliance with the probation condition "Proof of Compliance with Rule 9.20 Obligations."
2. On page 11 of the Stipulation, at the top of the page, "SBC-19-30065" is deleted, and in its place is inserted "SBC-19-O-30065".
3. On page 11 of the Stipulation, at numbered paragraph 3, "The Supreme Court and the Hearing Department ordered" is deleted, and in its place is inserted "The Hearing Department recommended, and the Supreme Court ordered".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date July 2, 2019

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b> <b>PUBLIC MATTER</b>		
<b>Counsel For The State Bar</b>  Jamie Kim Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1182  Bar # 281574	<b>Case Number(s):</b> 16-J-10788-CV	<b>For Court use only</b>  <b>FILED</b> MAY 02 2017 STATE BAR COURT CLERK'S OFFICE LOS ANGELES P.B.
<b>Counsel For Respondent</b>  David Kestenbaum Kestenbaum Law Group, APC 14401 Sylvan St., Ste. 100 Van Nuys, CA 91401 (818) 616-4312  Bar # 85228	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  Bar # 79851  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 June 23, 1978.
- (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.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

kwiktag • 211 097 887



(Effective July 1, 2016)

Actual Suspension

mj92



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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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.



(Do not write above this line.)

- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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

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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:**

**Pretrial Stipulation, see attachment, page 14.**

#### **D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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 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:
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                          16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.

2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").

3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.

4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.

5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.

6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.

7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.

8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.



23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.



35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.

46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon



respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)



(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
--	---

### 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.

<u>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.

1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

Date

May 2, 2017

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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:

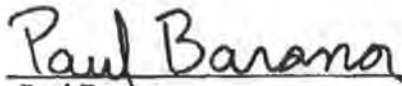
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court

# DECLARATION OF SERVICE

CASE NUMBER(s): **SBC-20-O-30252**

**(OCTC-20-O-02348)**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, sandra.jones@calbar.ca.gov, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

## FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



*(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



*(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: **9414-7266-9904-2111-0055-04** at Los Angeles, addressed to: *(see below)*



*(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: \_\_\_\_\_ addressed to: *(see below)*

Person Served	Business Address via U.S. Certified Mail:	Fax Number	Courtesy Copy via U.S. First-Class Mail to:
Scott Michael Cantor	Scott Michael Cantor Scott Michael Cantor, Ltd. 410 S Rampart Blvd Ste. 390 Las Vegas, NV 89145-5749		Scott Michal Cantor, Ltd 1412 Sun Copper Dr. Las Vegas NV 89117
		Electronic Address	

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: April 20, 2020

SIGNED: /s/ Kathi Palacios

Kathi Palacios  
Declarant

# Public Matter

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
KELLY MCNAMARA, No. 214997  
SUPERVISING ATTORNEY  
JOSEPH A. SILVOSO, III, No. 248502  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1247

**FILED**

4/13/2020 *yps*

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

SCOTT MICHAEL CANTOR,  
State Bar No. 79851,

An Attorney of the State Bar

Case No. **SBC-20-O-30252**

NOTICE OF DISCIPLINARY CHARGES

(OCTC Case No. 20-O-02348)

## **NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

///

///

///

1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott Michael Cantor ("respondent") was admitted to the practice of law in the State  
4 of California on June 23, 1978. Respondent was a licensed attorney at all times pertinent to  
5 these charges, and is currently a licensed attorney of the State Bar of California.

6 COUNT 1

7 Case No. 20-O-02348  
8 Business and Professions Code, section 6068(k)  
9 [Failure to Comply with Conditions of Probation]

10 2. Respondent failed to comply with conditions attached to respondent's disciplinary  
11 probation in State Bar Case no. SBC-19-O-30065 (True and correct copies of the Supreme  
12 Court's order in case number S257331 and Stipulation re Facts, Conclusions of Law and  
13 Disposition and Order Approving Actual Suspension in State Bar Court Case no. SBC-19-O-  
14 30068 are attached hereto as Exhibit 1 and is incorporated by reference) as follows, in willful  
15 violation of Business and Professions Code, section 6068(k):

- 16 A. Provide a declaration, under penalty of perjury, attesting that respondent read the  
17 California Rules of Professional Conduct and certain sections of the Business and  
18 Professions Code with his first quarterly report;
- 19 B. Schedule a meeting with respondent's assigned probation specialist within 15  
20 days of the effective date of the Supreme Court order (Exhibit 1) imposing  
21 discipline;
- 22 C. Participate in a meeting with assigned probation case specialist to discuss  
23 probation terms within 30 days after the effective date of the Supreme Court's  
24 order (Exhibit 1); and
- 25 D. Submit a quarterly report to the Office of Probation no later than January 10,  
26 2020.

**NOTICE - INACTIVE ENROLLMENT!**

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.**

**NOTICE - COST ASSESSMENT!**

**IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: April 13, 2020

By: 

Joseph A. Silvoso, III  
Deputy Trial Counsel



## EXHIBIT 1

SUPREME COURT  
FILED

OCT 10 2019

(State Bar Court No. SBC-19-O-30065)

Jorge Navarrete Clerk

S257331

Deputy

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SCOTT MICHAEL CANTOR on Discipline

The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first one year of probation;
2. Respondent must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 3, 2019; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of **OCT 10 2019** 20

By:   
Deputy

**CANTIL-SAKAUYE**

Chief Justice

RECEIVED

OCT 15 2019

CENTRAL ADMINISTRATION

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel for the State Bar</b>  <b>Joseph A. Silvoso III</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1247</b>  <b>State Bar # 248502</b>	<b>Case Number(s):</b> <b>SBC-19-O-30065</b>	<b>For Court use only</b>  <div style="text-align: center;"> <b>FILED</b>  <i>ps</i>  <b>JUL - 3 2019</b>            STATE BAR COURT            CLERK'S OFFICE            LOS ANGELES         </div>	
<b>Counsel For Respondent</b>  <b>David S. Kestenbaum</b> <b>14401 Sylvan Street, Suite 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>State Bar # 85228</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> <b>SCOTT M. CANTOR</b>  <b>State Bar # 79851</b>  <b>(Respondent)</b>			

**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 an attorney 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 are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective March 15, 2019)

Actual Suspension

- (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. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's annual fees for each of the following years:  
  
If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline:**
- (a) ☒ State Bar Court case # of prior case: **State Bar Court case no. 16-J-10756-CV. See Exhibit 1, 20 pages.**
  - (b) ☒ Date prior discipline effective: **October 5, 2017**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Respondent was found culpable of former Rules of Professional Conduct and State Bar Act violations based on another jurisdiction's record of discipline pursuant to Business and Professions Code section 6049.1 (See pages 12-13 and Exhibit 1, p. 7-14)**
  - (d) ☒ Degree of prior discipline: **60 days of actual suspension, one year stayed suspension, and one year probation.**
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(Do not write above this line.)

---

- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 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 likely to recur.
- (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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.

- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 resulting from circumstances which were not reasonably foreseeable or were beyond Respondent's control and were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:**

Pre-Trial Stipulation, see page 13.

**D. Recommended Discipline:**

- (1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **one year** of the period of Respondent's probation.

- (2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3) ☐ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.



(Do not write above this line.)

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:



(Do not write above this line.)

- a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

(Do not write above this line.)

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Respondent must provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official State Bar Record Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☐ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) ☒ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **respondent agreed to attend State Bar Ethics School or participate in six hours of Minimum Continuing Legal Education (MCLE) Courses in lieu of State Bar Ethics School (because he resides outside of California) as part of his prior disciplinary proceeding (Exhibit 1). See In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7.**
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact



(Do not write above this line.)

must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1) ☐ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☒ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because **respondent agreed to attend, take, and pass the Multistate Professional**

**Responsibility Examination as part of his prior disciplinary proceeding (Exhibit 1). In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**

- (3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension. In addition, Respondent must also comply with the probation condition at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT M. CANTOR

CASE NUMBER:                          SBC-19-30065

**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. 18-O-17275 (State Bar Investigation)**

**FACTS:**

1. On May 2, 2017, the State Bar Court Hearing Department filed and served upon respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension; in State Bar Court Case No. 16-J-10756 (Order Approving Stipulation).

2. On September 5, 2017, the California Supreme Court filed and transmitted Order No. S242702 (Order) which suspended respondent from the practice of law for a period of one year (the Court stayed the execution of that suspension), suspended respondent for 60 days of actual suspension, placed him on probation for a period of one year. The Order also subjected respondent to the conditions of probation as recommended by the Hearing Department in its Order Approving Stipulation. Respondent's probation became effective on October 5, 2017.

3. The Supreme Court and the Hearing Department ordered respondent to comply with certain conditions of probation, but he failed to do so as set forth below.

4. The Supreme Court required respondent, within 30 days from the effective date of discipline (on or before November 4, 2017), to contact the Office of Probation (Probation) and schedule a meeting with his assigned Probation deputy to discuss the terms and conditions of probation. The Order also required respondent to meet with Probation upon the direction of the Probation deputy in-person or by telephone.

5. On September 27, 2017, Probation emailed respondent informing him that they uploaded, to his State Bar Profile, a copy of his probation letter. The letter outlined the terms and conditions of respondent's probation.

6. Respondent failed to contact Probation on or before November 4, 2017.

7. On November 6, 2017, Probation sent a letter to respondent informing him that he failed to schedule the required meeting.

8. On November 9, 2017, respondent called Probation to schedule the meeting.

9. Probation provided respondent with a meeting date of November 13, 2017, and instructed respondent to call a specified number at 1:00 pm.

10. Respondent failed to call Probation on November 13, 2017, at 1:00 pm.

11. The next day respondent contacted Probation, stated he missed the meeting because the computers at his office crashed, and rescheduled the meeting to November 16, 2017 at 4:00 pm. The meeting took place on November 16, 2017 at 4:00 pm.

12. The Hearing Department ordered respondent to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to Probation on January 10, 2018, April 10, 2018, and July 10, 2018, (quarterly reports) and file a final report on or before October 5, 2018.

13. Respondent failed to file quarterly reports for April 10, 2018, and July 10, 2018 and failed to provide a final report on or before October 5, 2018.

#### **CONCLUSION OF LAW:**

14. Respondent's multiple violations of the terms and conditions of his probation constitute an intentional violation of Business and Professions Code section 6068(k).

#### **AGGRAVATING CIRCUMSTANCES.**

##### **Prior Record of Discipline:**

Respondent's most recent record of discipline was in State Bar Case No. 16-J-10756 (Supreme Court Case No. S242702). The pending case, and subject of this stipulation, resulted from probation violations for that matter.

Respondent's prior record of discipline stemmed from a Nevada matter involving three consolidated cases (Nevada State Bar Case numbers SG10-0429 (the Safi Matter), SG11-1139 (the Bermudez Matter), and SG11-1330 (the Alfano Matter)). The Nevada case concluded in respondent entering into a conditional plea to facts and admissions to violations of Nevada Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1, and 8.4. Respondent's misconduct in Nevada was the California equivalent of:

- Former Rules of Professional Conduct, rule 3-110(A) [failure to perform].
- Former Rules of Professional Conduct, rule 4-200(A) [receipt of illegal fees].
- Business and Professions Code section 6068(a) [failure to uphold laws].
- Business and Professions Code section 6068(m) [failure to inform client of significant developments].
- Business and Professions Code section 6103 [disobedience of a court order].

In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds.

In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint



Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition.

In the Alfano Matter, respondent acted as the administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code. Respondent then received illegal fees for his work as an administrator. Respondent also failed to perform legal services by failing to file a First and Final Accounting.

As aggravation in the prior California case, respondent stipulated to a prior record of discipline (discussed below), multiple acts of wrongdoing, and failure to make restitution.

The State Bar considered respondent's stipulation as mitigation.

Respondent's recent California disciplinary proceeding resulted in one year stayed suspension, one year probation, and 60 days actual suspension.

Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the documents.

Respondent's first record of discipline resulted in a private reprimand from the State Bar of Nevada in Grievance File #89-138-406 on January 25, 1990. Respondent temporarily misplaced two casino chips entrusted to him by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safe keep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the former California Rules of Professional Conduct. Respondent received no discipline in California for the Nevada private reprimand.

Due to the remoteness in time (the violation occurred in 1983), level of discipline respondent received from the State Bar of Nevada (private reprimand), and the fact that the California State Bar did not move forward with disciplinary proceedings in the 1990 matter, respondent's 1990 Nevada disciplinary proceeding provides minimal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to timely schedule his meeting with Probation and he failed to attend the first scheduled meeting with Probation. He failed to file his April 10, 2018, and July 10, 2018, quarterly reports and his final report on or before October 5, 2018. Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept.2002) 4 Cal. State Bar Ct. Rptr. 498, 555; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [when attorney commits multiple violations of same condition, gravity of each successive violation increases].)

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial stipulation:** By entering into a pretrial stipulation, thereby saving the State Bar and the State Bar Court time and resources, respondent is entitled to mitigation. (See *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].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.14 provides, “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent outright and repeatedly failed to comply with a number of conditions of his probation. He untimely scheduled his meeting with Probation and missed his initial meeting with Probation following the effective date of his discipline. He failed to submit two quarterly reports and failed to provide his final report.

Furthermore, Standard 1.8(a) requires that, “[i]f a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silverton*, *supra*, 36 Cal. 4th at p. 92.) Respondent’s repeated misconduct is not remote because the violations of his probation terms occurred soon after the effective date of his probation and continued to occur. Moreover, respondent’s conduct is not minor because the repeat violations tend to show his indifference to the discipline to which he agreed.

In determining the appropriate level of discipline under the standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) Two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate. Case law supports this result.

In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one year suspension, stayed, including a 60 day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

In *the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, the State Bar moved to revoke Tiernan's probation for failure to cooperate with his probation monitor and file timely quarterly reports. Tiernan had four prior records of discipline. The probation Tiernan violated stemmed from a lack of communication with clients and resulted in 60 days of actual suspension. While Tiernan ultimately completed the terms of his probation, the court found further aggravation for multiple acts of misconduct for his failures to timely comply with probation. The Review Department imposed 11 months of actual suspension.

In each of the forgoing cases the Courts increased the respondents' level of discipline from the underlying matter. In the present case, respondent's misconduct was worse than Conroy and Tiernan's. They all completed their probation requirements, albeit late. Respondent failed to file two of his quarterly reports and his final report. And while he participated in his meeting with Probation, he did so late and after he failed to attend the first scheduled meeting.

Respondent's recent record of discipline resulted in one year stayed suspension, one year probation, and 60 days actual suspension, coupled with his failure to take action in his probation, significant discipline pursuant to Standard 1.8(a) is required. Respondent, through his own inaction, demonstrated a failure to grasp the importance of strict compliance with his probation conditions.

On balance, and in light of the aggravating circumstances, and lack of mitigating circumstances (save entering into this stipulation), two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

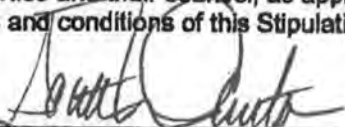
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 28, 2019, the discipline costs in this matter are \$3985. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

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In the Matter of: <b>SCOTT M. CANTOR</b>	Case Number(s): <b>SBC-19-O-30065</b>
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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.

<u>6-6-19</u> Date	 Respondent's Signature	<u>Scott M. Cantor</u> Print Name
<u>6-10-19</u> Date	 Respondent's Counsel Signature	<u>David S. Kestenbaum</u> Print Name
<u>6/10/19</u> Date	 Deputy Trial Counsel's Signature	<u>Joseph A. Silvoso, III</u> Print Name

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In the Matter of: SCOTT M. CANTOR	Case Number(s): SBC-19-O-30065
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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.

1. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph E.(14) recommending compliance with the probation condition "Proof of Compliance with Rule 9.20 Obligations."
2. On page 11 of the Stipulation, at the top of the page, "SBC-19-30065" is deleted, and in its place is inserted "SBC-19-O-30065".
3. On page 11 of the Stipulation, at numbered paragraph 3, "The Supreme Court and the Hearing Department ordered" is deleted, and in its place is inserted "The Hearing Department recommended, and the Supreme Court ordered".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date July 2, 2019

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court

ORIGINAL

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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  <b>Jamie Kim</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1182</b>  <b>Bar # 281574</b>	<b>Case Number(s):</b> <b>16-J-10788-CV</b>	<b>For Court use only</b>  <div style="text-align: right;"> <b>FILED</b>  <b>MAY 02 2017</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
<b>Counsel For Respondent</b>  <b>David Kestenbaum</b> <b>Kestenbaum Law Group, APC</b> <b>14401 Sylvan St., Ste. 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>Bar # 85228</b>	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  <b>Bar # 79851</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>		

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

kwiktag \* 211 097 887



(Effective July 1, 2016)

Actual Suspension

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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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.



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- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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

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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:**

**Pretrial Stipulation, see attachment, page 14.**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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 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:
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                              16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.

2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").

3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.

4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.

5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.

6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.

7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.

8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.



23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.



35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.

46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon



respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests



for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
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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.

<u>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.

1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

Date

May 2, 2017

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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:

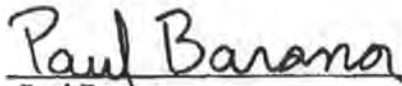
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court

## DECLARATION OF SERVICE

CASE NUMBER(s): **20-O-02348**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, [sandra.jones@calbar.ca.gov](mailto:sandra.jones@calbar.ca.gov), declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

### NOTICE OF DISCIPLINARY CHARGES



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



*(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



*(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 9414 7266 9904 2111 0102 01

at Los Angeles, addressed to: *(see below)*



*(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS, addressed to: *(see below)*

Person Served

Business Address via U.S. Certified Mail:

Fax Number

Courtesy Copy via U.S. First-Class Mail to:

Scott Michael Cantor

Scott Michael Cantor  
Scott Michael Cantor, Ltd.  
410 S Rampart Blvd Ste. 390  
Las Vegas, NV 89145-5749

Electronic Address

Scott Michal Cantor, Ltd  
1412 Sun Copper Dr.  
Las Vegas NV 89117

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

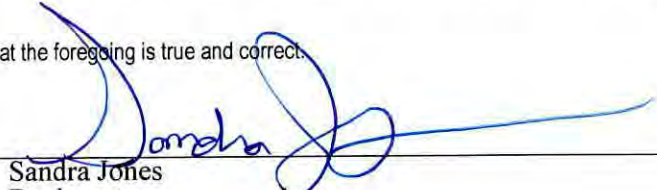
I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: April 13, 2020

SIGNED:

  
Sandra Jones  
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST **August 4, 2021**

State Bar Court, State Bar of California,  
Los Angeles

By \_\_\_\_\_  
Clerk



# EXHIBIT 3

# EXHIBIT 3

IN THE SUPREME COURT OF CALIFORNIA **SUPREME COURT  
FILED**

En Banc

SEP 05 2017

In re SCOTT MICHAEL CANTOR on Discipline

Jorge Navarrete Clerk

Deputy

The court orders that Scott Michael Cantor, State Bar Number 79851, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for one year subject to the following conditions:

1. Scott Michael Cantor is suspended from the practice of law for the first 60 days of probation;
2. Scott Michael Cantor must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on May 2, 2017; and
3. At the expiration of the period of probation, if Scott Michael Cantor has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Scott Michael Cantor must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with his membership fees for each of the years 2018, 2019, and 2020. If Scott Michael Cantor 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of SEP 05 2017 20\_\_\_\_  
Month

By: \_\_\_\_\_

Deputy

**CANTIL-SAKAUYE**  
Chief Justice

kwiktag®

226 163 160



(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel For The State Bar</b>  <b>Jamie Kim</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1182</b>  <b>Bar # 281574</b>	<b>Case Number(s):</b> <b>16-J-10756-CV</b>	<b>For Court use only</b>  <div style="text-align: right;"> <b>FILED</b>  <b>MAY 02 2017</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>	
<b>Counsel For Respondent</b>  <b>David Kestenbaum</b> <b>Kestenbaum Law Group, APC</b> <b>14401 Sylvan St., Ste. 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>Bar # 85228</b>	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>		
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  <b>Bar # 79851</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>	<b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>		

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

kwiktag \* 211 097 887



mjs

(Do not write above this line.)

- (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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

(Do not write above this line.)

- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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:**

**Pretrial Stipulation, see attachment, page 14.**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

(Do not write above this line.)

- (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 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:
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                          16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.
2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").
3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.
4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.
5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.
6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.
7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.
8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.
10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.
11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.
12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.
13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.
14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.
15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.
16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.
17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.
18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.
19. On August 11, 2010, the SBN received a grievance from BJN against respondent.
20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.
21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.
22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.

23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter.

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.

35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.



46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.

57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon

respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept.1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

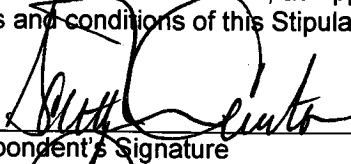
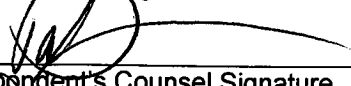
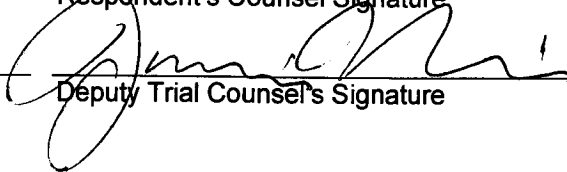


(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
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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.

<u>3.27.17</u>		<u>Scott Michael Cantor</u>
Date	Respondent's Signature	Print Name
<u>4-4-17</u>		<u>David Kestenbaum</u>
Date	Respondent's Counsel Signature	Print Name
<u>4/6/2017</u>		<u>Jamie Kim</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.
1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
  2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

May 2, 2017  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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:

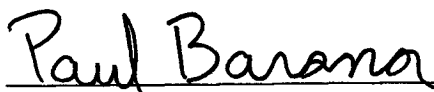
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court



KESTENBAUM LAW GROUP.  
DAVID S. KESTENBAUM, ESQ.  
CA Bar Number:  
14401 Sylvan Street, Ste 100  
Van Nuys, CA 91401  
Tel : 818-616-4312  
David@kestenbaumlawgroup.com

**FILED**

**JAN 18 2017**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**STATE BAR COURT**

**HEARING DEPARTMENT – LOS ANGELES**

In the matter of:

Case Nos. 16-J-10756

SCOTT MICHAEL CANTOR,  
No. 79851.

*Answer To:*  
NOTICE OF DISCIPLINARY  
CHARGES

SCOTT M. CANTOR, ESQ.,  
STATE BAR NO. 1713,

A Member of the State Bar

**SCOTT MICHAEL CANTOR'S ANSWER TO NOTICE OF DISCIPLINARY CHARGES**

COMES NOW, Respondent, SCOTT MICHAEL CANTOR, No. 79851, a member of the State Bar of California, by and through his counsel, DAVID S. KESTENBAUM, ESQ. of KESTENBAUM LAW GROUP and in answer to the Notice of Disciplinary Charges on file herein, admits, denies, and alleges, as follows.

1. Respondent admits the allegations contained in paragraph 1 of the Notice of Disciplinary Charges.

2. The Respondent admits the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Notice of Disciplinary Charges.<sup>1</sup>

<sup>1</sup> The Notice of the Disciplinary Charges is without any paragraphs numbered 2 or 3.

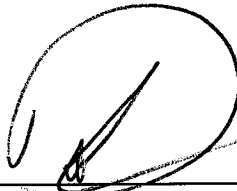
1  
2 **AFFIRMATIVE DEFENSES**

3       The discipline imposed by the jurisdiction in which the disciplinary charges arose, to wit: the  
4 State Bar of Nevada, has stayed any active suspension of the Respondent in the practice of law in the  
5 State of Nevada, in such a stay of active suspension would be warranted in these proceedings.

6       Dated this 12 day of January, 2017.

7                               Respectfully submitted,

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9                               **KESTENBAUM LAW GROUP**

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16                               **DAVID S. KESTENBAUM, ESQ.**  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_18th\_\_ day of January, 2017, I served a true and correct copy of SCOTT MICHAEL CANTOR'S ANSWER TO NOTICE OF DISCIPLINARY CHARGES in the above-captioned case, pursuant to standard Court practice, in the City and County of Los Angeles, by messenger/personal service to the parties at their below indicated addresses:

JAMIE J. KIM  
Enforcement , Los Angeles  
State Bar Court  
845 South Figueroa Street  
Los Angeles, CA 90017-2515

Now Messenger: VAHİK AURAND #76

An Employee of Kestenbaum Law Group

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
GREGORY P. DRESSER, No. 136532  
INTERIM CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
ACTING DEPUTY CHIEF TRIAL COUNSEL  
JOHN T. KELLEY, No. 193646  
ASSISTANT CHIEF TRIAL COUNSEL  
MICHAEL J. GLASS, No. 102700  
SUPERVISING SENIOR TRIAL COUNSEL  
JAMIE KIM, No. 281574  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1182

## PUBLIC MATTER

FILED

DEC - 5 2016

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

### STATE BAR COURT

### HEARING DEPARTMENT - LOS ANGELES

In the Matter of:

SCOTT MICHAEL CANTOR,  
No. 79851,

A Member of the State Bar.

) Case Nos. 16-J-10756

) NOTICE OF DISCIPLINARY CHARGES

) (Bus. & Prof. Code, § 6049.1; Rules Proc. Of  
) State Bar, rules 5.350 to 5.354)

### NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott Michael Cantor ("respondent") was admitted to the practice of law in the State  
4 of California on June 23, 1978, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 16-J-10756

7 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

8 4. On September 29, 2015, the Supreme Court of the State of Nevada entered an order  
9 against respondent, imposing a six month and one day suspension, stayed, with a one-year  
10 probation, based upon findings that respondent had committed professional misconduct in that  
11 jurisdiction, which respondent stipulated to in a Conditional Guilty Plea in Exchange for a State  
12 Form of Discipline. Thereafter, the decision of the foreign jurisdiction became final.

13 5. A certified copy of the final order of disciplinary action of the foreign jurisdiction, the  
14 September 29, 2015 Order Approving Conditional Guilty Plea Agreement, is attached as Exhibit  
15 1, and incorporated by reference.

16 6. A certified copy of the Conditional Guilty Plea in Exchange for a State Form of  
17 Discipline, filed on March 19, 2015, and the Findings of Fact, Conclusions of Law and  
18 Recommendation, filed on April 14, 2015, upon which the Supreme Court of the State of Nevada  
19 September 29, 2015 Order Approving Conditional Guilty Plea Agreement was based, is attached  
20 as Exhibit 2 and incorporated by reference. Included with Exhibit 2 is the complaint filed by the  
21 Nevada State Bar to initiate the underlying matter, dated February 24, 2014.

22 7. Copies of the statutes, rules or court orders of the foreign jurisdiction found to have  
23 been violated by respondent are attached as Exhibit 3 and incorporated by reference.

24 8. Respondent's culpability as determined by the foreign jurisdiction indicates that the  
25 following California statutes or rules have been violated or warrant the filing of this Notice of  
26 Disciplinary Charges:

27 A. *Matter re Bijan Safi*:  
28

- Business and Professions Code section 6103.
- *Matter re Marhayra Bermudez:*
  - Rules of Professional Conduct, rule 3-110(A), and
  - Business and Professions Code section 6068(m).
- *Matter re Frank and Robert Alfano:*
  - Rules of Professional Conduct, rule 3-110(A),
  - Rules of Professional Conduct, rule 4-200(A), and
  - Business and Professions Code section 6068(a).

#### ISSUES FOR DISCIPLINARY PROCEEDINGS

9. The attached findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state subject only to the following issues:
- A. The degree of discipline to impose;
  - B. Whether, as a matter of law, respondent's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction; and
  - C. Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

10. Respondent shall bear the burden of proof with regard to the issues set forth in subparagraphs B and C of the preceding paragraph.

#### NOTICE - INACTIVE ENROLLMENT!

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.**

#### NOTICE - COST ASSESSMENT!

1 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
2 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
3 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
4 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
5 PROFESSIONS CODE SECTION 6086.10.

6 Respectfully submitted,

7 THE STATE BAR OF CALIFORNIA  
8 OFFICE OF THE CHIEF TRIAL COUNSEL

9 DATED: 12/2/2016

10 By: 

11 Jamie Kim  
12 Deputy Trial Counsel  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF  
SCOTT M. CANTOR, BAR NO. 1713.

No. 68044

FILED

SEP 29 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT*

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Scott Cantor. Under the agreement, Cantor admitted to violations of RPC 1.1 (competence), RPC 1.2 (scope of representation), RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.5 (fees), RPC 1.15 (safekeeping property), RPC 3.2 (expediting litigation), RPC 3.4 (fairness to opposing party and counsel), RPC 8.1 (bar admission and disciplinary matters), and RPC 8.4 (misconduct).

The agreement provides for a stayed six-month-and-one-day suspension, with the following conditions: (1) probation for one year with quarterly reports submitted to Bar Counsel, during which time, Cantor must stay out of trouble and not receive any grievances that result in actual discipline, which would be considered a violation of probation; probation to start the day the plea is accepted by the panel; (2) Cantor shall obtain a mentor approved by Bar Counsel to monitor his practice; the mentor shall be a Nevada licensed attorney in good standing; the mentor will monitor Cantor's active cases and ensure that his cases are properly

filed, calendared, and clients are advised; the mentor will ensure that Cantor maintains a proper accounting system and will review the trust account; the mentor shall submit a quarterly report to Bar Counsel about Cantor's progress and any issues that may have developed; (3) the mentoring agreement shall be executed by Cantor and the mentor within 30 days of the hearing; (4) Cantor shall submit a quarterly report to Bar Counsel providing an update as to his place of employment, area(s) of practice, his caseload, and any issues that may have developed; and (4) Cantor shall pay the actual costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within one year.

Based on our review of the record, we conclude that the guilty plea agreement should be approved. See SCR 113(1). We hereby impose a stayed sixth-month-and-one-day suspension. Additionally, Cantor must comply with all of the conditions in the plea agreement, as outlined above. Cantor and the State Bar shall comply with the applicable provisions of SCR 121.1 and SCR 115 and 116, if necessary.

It is so ORDERED.<sup>1</sup>

Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Gibbons, J.  
Gibbons

Cherry, J.  
Cherry

Pickering, J.  
Pickering

<sup>1</sup>The Honorable Nancy M. Saitta, Justice, voluntarily recused herself from participation in the decision of this matter.

DOUGLAS, J., dissenting:

I would reject the plea.

  
\_\_\_\_\_, J.  
Douglas

cc: Chair, Southern Nevada Disciplinary Board  
Sean Claggett & Associates, Inc.  
Bar Counsel, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada  
Perry Thompson, Admissions Office, United States Supreme Court

**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: November 6, 2015

Supreme Court Clerk, State of Nevada

By Danna Meyer *dm* Deputy



**STATEMENT OF THE CUSTODIAN OF DISCIPLINARY RECORDS  
FOR THE STATE BAR OF NEVADA**

IN RE:       **Scott M. Cantor, Esq.**  
              **Nevada Bar No. 1713**

The undersigned, in her capacity as custodian of disciplinary records for the State Bar of Nevada, hereby certifies the attached are true and correct copies of the documents filed in *State Bar of Nevada v. Scott M. Cantor*, Case Nos. SG10-0429, SG11-1139, SG11-1330:

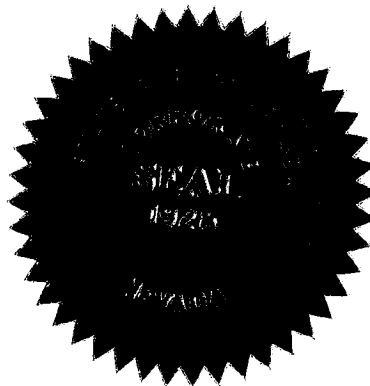
1. Complaint filed February 24, 2014;
2. Conditional Guilty Plea in Exchange for a Stated Form of Discipline filed March 19, 2015;
3. Findings of Fact, Conclusions of Law and Recommendation filed April 14, 2015.

DATED this 22<sup>nd</sup> day of December, 2015

CUSTODIAN OF RECORDS  
STATE BAR OF NEVADA

  
\_\_\_\_\_  
Jana Chaffee

Hearing Administrator  
Office of Bar Counsel



**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: November 6, 2015

Supreme Court Clerk, State of Nevada

By Danna Meyer for Deputy



FILED

FEB 24 2014

STATE BAR OF NEVADA  
BY: *[Signature]*  
OFFICE OF BAR COUNSEL

Case Nos. SG10-0429, SG11-1139, SG11-1330

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,  
Complainant,

vs.

SCOTT M. CANTOR, ESQ.  
Nevada Bar No. 1713

Respondent.

COMPLAINT

TO: Scott M. Cantor, Esq.  
8751 W. Charleston Blvd.  
Suite 220  
Las Vegas NV 89117

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule 105(2), a **VERIFIED RESPONSE OR ANSWER** to this Complaint must be filed with the Office of Bar Counsel, State Bar of Nevada, 600 E. Charleston Boulevard, Las Vegas, Nevada 89104, within twenty (20) days of service of this Complaint. Procedure regarding service is addressed in Supreme Court Rule 109.

Complainant, State Bar of Nevada ("State Bar"), alleges that:

**COUNT 1**

**Case No. SG10-0429 / Bijan Safi**

1. Respondent, Scott M. Cantor ("Respondent"), Bar No. 1713, is now, and at all times pertinent herein was, a licensed attorney in the State of Nevada practicing law in Clark County, Nevada.

2. On or about August 11, 2010, the State Bar received a grievance from Bijan Safi of BJN, Inc. ("BJN").

1           3.     Safi had provided a pre-settlement loan to Raymond Delillo, Sr. ("Delillo").  
2           4.     Delillo was represented by Respondent in his personal injury matter.  
3           5.     On February 3, 2005, Safi advanced Delillo \$2,000 at the rate of 15% per  
4 month.  
5           6.     Delillo passed away on October 27, 2007, prior to the conclusion of his case.  
6           7.     Delillo's daughter, Patricia Mertz ("Mertz") was appointed Special  
7 Administrator on April 4, 2008.  
8           8.     Delillo's matter settled in June 2008.  
9           9.     At the time the case settled, Safi claimed that Delillo owed BJN \$26,500.  
10          10.    The insurance carrier issued a check to Graziadei & Respondent, Mertz and  
11 BJN in the amount of \$26,500 in June 2008.  
12          11.    The June 2008 check was not deposited.  
13          12.    In October 2008, Respondent wrote to Safi and informed him of the  
14 settlement as well as Delillo's passing.  
15          13.    Respondent's letter informed Safi that the amount BJN claimed as of  
16 October 2008 exceeded the amount of the settlement, including attorney fees.  
17          14.    Respondent's letter also informed Safi that his documentation indicated a  
18 loan of \$750, not \$2,000.  
19          15.    Respondent sent Safi another letter dated December 3, 2008, requesting  
20 that a reduction be made as Delillo's wife was suffering dementia and the money was  
21 needed for her nursing home facility.  
22          16.    On or about April 1, 2009, after Safi rejected a number of compromise offers  
23 by Respondent, Respondent informed Safi that he would have to interplead the funds.  
24          17.    The insurance carrier reissued Delillo's settlement check on August 13,  
25 2009, again payable to Graziadei & Respondent, Mertz, and BJN.

1           18. No interpleader had yet been filed when Baji submitted his grievance to the  
2 State Bar in August 2010.

3           19. Respondent, in his initial response to the State Bar dated September 10,  
4 2010, acknowledged to the State Bar that he had promised to file an interpleader but had  
5 not done so.

6           20. Respondent indicated that he had acknowledged the loan when it was in the  
7 amount of \$750. However, Respondent claimed that the \$2,000 amount was written in  
8 after he had signed off on the acknowledgment.

9           21. Respondent alleged that the initial settlement check from June 2008 was  
10 sent by the insurance carrier to the wrong address and was stale-dated by the time  
11 Respondent received it two (2) months later in August 2008.

12           22. Respondent, in his September 10 response, also indicated said he would file  
13 an interpleader by October 7, 2010, and would provide the State Bar a file-stamped copy  
14 of the interpleader.

15           23. Respondent failed to provide the State Bar a copy of the interpleader and, as  
16 a result, on March 16, 2011, the State Bar sent Respondent another letter requesting  
17 copies of interpleader, settlement documents, checks and trust account information.

18           24. Respondent responded on April 1, 2011, and provided a copy of the release  
19 and a copy of the check.

20           25. Respondent stated that an interpleader had not been filed because the law  
21 firm had dissolved.

22           26. Respondent also claimed that the check became stale-dated because all the  
23 signatures could not be obtained.

24           27. Respondent further claimed he was in the process of requesting another  
25 check.

1           28.   Respondent provided a draft of the interpleader with his April 2011 response.

2           29.   On May 2, 2011, the State Bar sent a letter to Respondent seeking an  
3 update regarding the status of filing the interpleader and obtaining a new check.

4           30.   Respondent's response indicated that it would be filed in a couple of days of  
5 his letter.

6           31.   Respondent indicated that he was requesting another check from opposing  
7 counsel, Karl Armstrong ("Armstrong").

8           32.   On May 23, 2011, the State Bar sent an additional follow-up letter to  
9 Respondent as court records revealed the interpleader had not yet been filed.

10          33.   Respondent failed to respond to the State Bar's letter dated May 23, 2011.

11          34.   On June 28, 2011, a reminder letter was sent to Respondent via certified  
12 mail.

13          35.   On July 1, 2011, Respondent responded with a file-stamped copy of the  
14 interpleader on June 3, 2011. The case was titled *Graziadei & Respondent, Ltd., v.*  
15 *Patricia Mertz, et al.*, Case No. A642626 in the Eighth Judicial District Court.

16          36.   Respondent did not begin effecting service of process until September 2011.

17          37.   Respondent's July 1 response also stated that he was waiting for Armstrong  
18 to call him back to get a new check.

19          38.   Respondent claimed to have contacted the law firm in which Armstrong was  
20 previously employed and sent that law firm a letter.

21          39.   Respondent never directly called Armstrong.

22          40.   On August 10, 2011, a State Bar investigator called Armstrong and inquired  
23 whether he received any communication from Respondent.

24          41.   Armstrong informed the State Bar that he had not received any  
25 communication from Respondent.

1           42.    The State Bar sent Respondent a letter dated August 10, 2011, informing  
2 him of Armstrong's contact information and advising him that he had ninety (90) days to  
3 ensure that the interpleader was proceeding or the State Bar would seek a formal hearing  
4 in the matter. A status update was calendared for October 10, 2011.

5           43.    On October 10, 2011, Respondent sent a letter to the State Bar stating that  
6 "based upon my schedule, and the need to attend to a personal medical matter, please  
7 allow me to respond to the above-captioned matter by Friday, October 14, 2011."

8           44.    To date, Respondent has failed to directly respond to the State Bar's letter of  
9 August 10, 2011.

10          45.    The State Bar was copied on a letter Respondent sent to Safi's attorney, H.  
11 Stan Johnson, on January 12, 2012.

12          46.    According to the letter, Respondent was unsuccessful in serving BJN and  
13 had filed a motion for enlargement of time to serve process.

14          47.    Respondent stated he was in the process of serving the client by publication.

15          48.    Respondent also stated in the letter that he has been unsuccessful in  
16 obtaining a replacement check for the stale-dated check.

17          49.    Meanwhile, BJN, through their attorney Brian Morris ("Morris"), filed a *Motion*  
18 *for Disbursement of Interpleader Funds* because it had taken three (3) years for  
19 Respondent to file the interpleader action and a year had already passed since the initial  
20 filing.

21          50.    Respondent did not file an Opposition to the motion.

22          51.    On September 5, 2012, an Order granting the motion was entered and  
23 ordered Respondent to distribute \$26,500 to BJN.

24          52.    The Notice of Entry of Order was entered on September 20, 2012.  
25



1        53. Respondent failed to comply with the order and BJN subsequently filed an  
2 *Application for Order to Show Cause Why Graziadei & Respondent, Ltd., and/or Scott M.*  
3 *Respondent, Esq., Should Not Be Held in Contempt, Sanctions Issued, and Order*  
4 *Directing Compliance With Prior Court Order On Order Shortening Time* was filed on  
5 November 14, 2012.

6        54. The hearing was scheduled for November 27, 2012.

7        55. On November 25, 2012, Respondent filed a *Motion to Set Aside Order*  
8 *Granting Disbursement of Interpleader Funds* stating that 1) Morris was premature in filing  
9 the Motion to Disburse funds when Mertz had not filed an Answer to the lawsuit and 2)  
10 Respondent was not properly served with the motion, as all the dates and times were left  
11 blank.

12        56. On January 8, 2013, a Stipulation and Order was entered on wherein it was  
13 agreed that the \$26,500 settlement would be distributed as follows: \$8,833.34 would be  
14 paid to the DeLillio Estate, \$8,833.33 would be paid to Respondent and \$8,833.33 would  
15 be paid to Safi.

16        57. Further, Travelers was ordered to reissue the check in the amount of  
17 \$26,500 to Respondent to be held in his trust account pending approval of the probate  
18 court.

19        58. On March 19, 2013, BJN filed an *Application for Order to Show Cause Why*  
20 *Graziadei & Respondent and/or Respondent should not be held in contempt, sanctions*  
21 *issued, and order directing compliance with prior court order.*

22        59. According to the application, BJN had not received a response from  
23 Respondent regarding an estimated time frame when they could anticipate receiving the  
24 money that was ordered in the court's order of January 8, 2013.

1       60. Respondent filed an Affidavit in opposition to the application for order to  
2 show cause on March 27, 2013. In his affidavit, Respondent stated that he had not  
3 received the re-issue of Traveler's stale-dated check and on March 14, 2013 called  
4 Traveler's and learned that the check had been inadvertently mailed to the wrong address.

5       61. Respondent alleged that he received the check on March 19, 2013.

6       62. Respondent stated that he would apply for ratification and approval of  
7 distribution of settlement proceeds.

8       63. At the hearing on April 9, 2013, the Court denied the motion for sanctions but  
9 granted the motion seeking compliance with the order. The matter was set for status  
10 check on May 7, 2013, regarding the check distribution. It was noted that if monies had  
11 been distributed, then no appearances would be necessary.

12       64. The court ordered Respondent to give the settlement check to Morris.

13       65. On April 12, 2013, Respondent informed Morris that Mertz would first have to  
14 apply to the probate court for ratification and approval for the distribution of the settlement  
15 proceeds.

16       66. Respondent informed Morris that he should not disburse funds without  
17 probate approval.

18       67. A hearing was held on May 7, 2013. Respondent was not present but Morris  
19 was present for BJN. Morris informed the court that the check was in his possession, had  
20 been endorsed but the bank would not accept it as his firm was not named on the check.

21       68. Morris advised the Court that Delillo's estate had an open probate matter  
22 and Respondent had informed that Morris to not distribute funds without the probate  
23 court's permission.

1       69. The court noted that counsel for BJN had been very patient and ordered that  
2 sanctions in the amount of \$1,000 per day will begin if the money has not been distributed  
3 by Friday, May 10, 2013.

4       70. On May 7, 2013, the \$26,500 settlement check was deposited into  
5 Respondent's Nevada State Bank trust account ending in 2914.

6       71. On Friday, May 9, 2013, BJN received a Cashier's Check in the amount of  
7 \$8,833.33. This check was issued from Respondent's trust account ending in 2914.

8       72. At the time, the probate court had not adjudicated the matter.

9       73. On May 24, 2013, a petition for ratification and approval of distribution of  
10 settlement proceeds was filed *In the Matter of the Estate of Raymond DeLillo, Sr.*, Case  
11 No. P061754.

12       74. The distribution was approved at a hearing held on June 21, 2013.

13       75. A State Bar investigator called Mertz on August 1, 2013, to find out if she  
14 received Delillo's portion of the settlement proceeds. She had not.

15       76. Mertz was unaware that Respondent had distributed estate funds on May 9,  
16 2013, without approval from the probate court.

17       77. According to bank records received by the State Bar, on August 6, 2013,  
18 Respondent issued checks to Mertz, the other heirs and a lienholder. These checks  
19 totaled \$8,798.75.

20       78. In addition, it appears that Respondent used his portion of the settlement  
21 proceeds (\$8,833.33) to pay Raymond Delillo, Jr. what appears to be settlement from a  
22 personal injury claim with a date of loss of May 3, 2002. Respondent also paid lienholders  
23 in relation to Delillo, Jr.'s case and referenced the same date of loss. Those checks total  
24 \$9,937.20.

79. In light of the foregoing, Respondent violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15 (Safekeeping Property), RPC 3.2 (Expediting Litigation), RPC 3.4 (Fairness to Opposing Party and Counsel), and RPC 8.1 (Bar Admission and Disciplinary Matters), and RPC 8.4 (Misconduct).

**COUNT 2**

**Case No. SG11-1139 / Marhayra Bermudez**

80. In April 2009, Marhayra Bermudez ("Bermudez") retained Respondent to represent her in a joint petition for divorce.

81. Respondent's fee was \$750 plus court fees.

82. Bermudez did not have the money initially and it was agreed she could make payments.

83. By May 28, 2009, Bermudez had paid \$440 toward her retainer.

84. In total, Bermudez paid Respondent the sum of \$1,030 between April 2009 and January 2010.

85. By May 2009, Bermudez had provided Respondent with all the necessary paperwork, including proof of the mandatory seminar for separating parents (hereinafter referred to as "COPE").

86. Bermudez had not heard from Respondent or his office since May 2009, so on July 16, 2009, Bermudez called Respondent's office to see if the documents were ready to sign.

87. She was told by the paralegal to come in and sign them.

88. Bermudez was led to believe by Respondent's office that the paperwork was subsequently filed and she called every month to find out the status.

89. After a few months, Bermudez went to the office and met with Respondent.

90. Bermudez reviewed the documents, which had not been filed.

1        91. While Bermudez was reading the documents, she noticed an error that she  
2 brought to Respondent's attention. The real property was omitted from the petition.

3        92. The documents were corrected and signed at that time.

4        93. Afterwards, Bermudez called Respondent's office every month to see if the  
5 decree was issued.

6        94. Bermudez was initially informed that they had not heard from the court.

7        95. In March 2011, Bermudez was informed that she had to come back into the  
8 office and resign the documents as "the court kicked the paperwork because it was two  
9 years old."

10       96. A month later, Bermudez called Respondent's office to find out if the decree  
11 was signed.

12       97. Bermudez was told that the "courts had kicked back the package again  
13 because there were some mistakes in the divorce decree."

14       98. According to the pleadings obtained by the State Bar from Family Court, the  
15 Joint Petition was signed by Bermudez on October 2, 2009, according to Bermudez's date  
16 of signature and August 17, 2009 for her husband.

17       99. However, this petition was not filed until November 9, 2010, over one (1)  
18 year after being signed by the notaries.

19       100. The Joint Petition had conditions such as revisiting overnight visitation in  
20 eight (8) months, which had elapsed prior to the petition's filing.

21       101. The COPE certificates were completed in May 2009, but these were not filed  
22 until January 27, 2011.

23       102. The Resident Witness Affidavit attesting that the parties had been resided in  
24 Nevada for the prior six (6) weeks was signed in September 2009 but was not filed until  
25 January 27, 2011.

1        103. Respondent signed the Request for Summary Disposition on April 26, 2010,  
2 but the pleading was not filed until January 27, 2011.

3        104. Given that Respondent filed the Joint Petition more than one (1) year after it  
4 had been signed, the District Court issued Respondent a memo on January 31, 2011,  
5 informing him that the filed documents were too old to be processed as conditions may  
6 have changed since the parties signed the Joint Petition, and specifically noted the living  
7 arrangement issue as one of the concerns.

8        105. The District Court's Memo to Respondent further indicated that the 2009  
9 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed  
10 in 2011.

11        106. The District Court's memo also noted that the Joint Petition contained  
12 mathematical errors in regard to child-support calculations (listed \$62.50 weekly and  
13 \$541.67 monthly) and Respondent was directed to reevaluate the child support  
14 calculations.

15        107. On April 21, 2011, the District Court returned the Decree of Divorce that  
16 Respondent had submitted to the Department D's chambers as Respondent had failed to  
17 make the changes indicated in the January 31 memo.

18        108. On August 23, 2011, Bermudez spoke with Respondent, who informed  
19 Bermudez that he was going to personally go to the court to find out what happened.

20        109. Respondent instructed her to call back after 4:00 p.m. the next day.

21        110. Bermudez told Respondent during that conversation that she was going to  
22 find another lawyer because it had taken two (2) years to file a joint petition for a divorce  
23 and a decree had not been signed.

24        111. In response, Respondent told her that even if she went to a lawyer, it would  
25 take time for the divorce to go through.

1           112. Bermudez called back the next day, August 24, 2011, and was unable to  
2 speak with either Respondent or his assistant.

3           113. She was told Respondent would not be back in the office until August 29,  
4 2011.

5           114. On November 17, 2011, the Court entered a Notice of Entry of Order of  
6 Dismissal without Prejudice pursuant to EDCR 5.90 because the matter had been pending  
7 longer than one (1) year and no action had been taken for more than six (6) months.

8           115. Bermudez then filed, in proper person, her own joint petition for divorce on  
9 February 1, 2012,

10          116. Bermudez's Decree was entered on February 23, 2012.

11          117. The State Bar sent Respondent a letter of investigation via certified mail  
12 return receipt requested on September 30, 2011.

13          118. On October 10, 2011, the State Bar received a fax from Respondent  
14 requesting an extension of an additional fifteen (15) days to respond due to a medical  
15 matter.

16          119. Respondent failed to respond even after the additional fifteen (15) day  
17 period had expired.

18          120. On December 9, 2011, the State Bar sent a second letter via certified mail  
19 advising Respondent that if he does not respond, it would be considered a violation of  
20 RPC 8.1.

21          121. Respondent failed to respond to the State Bar's letter dated December 9,  
22 2011.

23          122. On June 6, 2012, Respondent faxed to the Office of Bar Counsel a copy of  
24 the State Bar of Nevada Fee Dispute Release wherein the Respondent agreed to refund  
25 \$750 to Bermudez.



1 123. However, the Office of Bar Counsel has not received a substantive response  
2 from Respondent regarding the allegations raised by Bermudez.

3 124. In light of the foregoing, Respondent violated RPC 1.1 (Competence), RPC  
4 1.5 (Fees), RPC 1.2 (Scope of Representation), RPC 1.3 (Diligence), RPC 1.4  
5 (Communication), RPC 1.15 (Safekeeping Property), RPC 1.16 (Declining or Terminating  
6 Representation), RPC 3.2 (Expediting Litigation), RPC 8.1 (Bar Admission and Disciplinary  
7 matters), RPC 8.4 (Misconduct).

8 **COUNT 3**

9 **Case No. SG11-1330 / Frank and Robert Alfano**

10 125. The State Bar received a grievance from Frank and Robert Alfano ("Frank  
11 and Robert" or the "Alfanos").

12 126. Their mother, Bertha Alfano ("Bertha") was under the guardianship of the  
13 Public Guardian.

14 127. Bertha died on July 11, 2008.

15 128. Frank and Robert were heirs to Bertha's estate.

16 129. The Alfanos subsequently retained the firm of Respondent & Graziadei to  
17 handle the probate for Bertha's estate. Graziadei acted as the attorney for the estate and  
18 Respondent acted as the Administrator for the estate.

19 130. On July 10, 2009, Bertha's will was admitted to probate in *The Matter of*  
20 *Bertha Alfano*, Eighth Judicial District Court Case No. P065829.

21 131. Respondent filed an Inventory on April 14, 2010.

22 132. This Inventory identified nine (9) savings bonds totaling \$18,000 and a bank  
23 account at Nevada State Bank with a value of \$88,377.47.

24 133. A Notice to Creditors was filed July 9, 2010, with the Affidavit of Publication  
25 being filed on July 26, 2010.

1        134. From December 2009 to December 2010, Frank and Robert spoke with  
2 Respondent on the phone in an effort to settle the estate.

3        135. On January 5, 2011, Robert sent Respondent a letter requesting that  
4 Respondent hasten processing the Alfano estate.

5        136. On January 10, 2011, Respondent sent a letter to the Alfanos wherein he  
6 indicated that he would be filing a First and Final Accounting and Petition for Distribution.

7        137. In that letter, Respondent stated, "it is not complicated but will take  
8 approximately two weeks to complete and file."

9        138. However, Respondent failed to file the First and Final Accounting, which  
10 remains unfiled as of the date of this Complaint.

11        139. On or about July 1, 2011, Frank and Robert retained attorney Alice Jacobs  
12 Carles ("Carles"), an attorney in New Jersey, the state in which they reside, to assist them  
13 with the probate.

14        140. Carles wrote to Respondent on July 1, 2011, after being unable to reach him  
15 on the phone.

16        141. On July 12, 2011, Respondent responded to Carles stating he would file the  
17 First and Final Accounting within ten (10) calendar days.

18        142. However, Respondent never did so.

19        143. On August 16, 2011, the State Bar sent a letter of investigation to  
20 Respondent via certified mail.

21        144. On August 24, 2011, Respondent sent a letter to the State Bar requesting an  
22 additional ten (10) days to respond because he needed to attend a personal matter in  
23 Reno.

24        145. However, Respondent still failed to respond, even with the extension.  
25

1           146. As a result, on October 13, 2011, the State Bar sent Respondent a reminder  
2 letter via certified mail advising him that failure to respond could be considered a separate  
3 disciplinary violation. This return receipt card was returned signed by Cate Talbot.  
4 Respondent again failed to respond.

5           147. On December 9, 2011, a final letter was sent to Respondent by the State Bar  
6 via certified mail. This card was returned signed by Dellos Rico.

7           148. Although Respondent was directed to respond within ten (10) days,  
8 Respondent did not respond to the State Bar until April 2012.

9           149. On March 9, 2012, the State Bar sent a letter to Respondent's former law  
10 partner, George Graziadei ("Graziadei"), requesting information regarding the estate.

11           150. Respondent responded on Graziadei's behalf to all letters the State Bar sent  
12 Graziadei seeking information. Graziadei passed away in or about August 2013.

13           151. The State Bar subpoenaed the Estate's bank records at Nevada State Bank  
14 on March 12, 2012.

15           152. Respondent was the signer on the Estate Account.

16           153. The initial deposit for Alfano's estate was \$88,363.31 from a check issued by  
17 the Public Guardian's office.

18           154. In December 2010, four (4) checks totaling \$3,000 were issued from the  
19 Estate's account.

20           155. The checks were all made payable to Respondent as Administrator of the  
21 Estate and the checks each referenced that they were an administrator's fee.

22           156. Such fees are required to be first approved by the probate court.

23           157. There were no court orders approving the disbursement

24           158. All four (4) checks were signed by Respondent.

1        159. A subpoena was subsequently served upon Respondent requesting that he  
2 provide accounting documents and a copy of the Alfano file.

3        160. On April 3, 2012, Respondent, in a letter to the State Bar, stated that once  
4 he and Graziadei dissolved their firm, he stopped receiving the mail from the bank.

5        161. Respondent acknowledged that it was his fault that the bank did not forward  
6 the mail to him and that he would correct the matter

7        162. In regard to the nine (9) bonds totaling \$18,000, Respondent stated that he  
8 did not have them in his possession because when he left the office, he left some items  
9 behind, including the bonds.

10       163. Respondent said he would check his storage unit to locate the bonds.

11       164. Respondent said he intended to cooperate with the State Bar's investigation  
12 and complete the First and Final Accounting and distribute the estate.

13       165. On April 19, 2012, Respondent provided a response to the State Bar  
14 subpoena, wherein he provided bank records and said he was still in possession of  
15 personal items belonging to the estate.

16       166. However, Respondent stated he was unable to locate the savings bonds.

17       167. Frank and Richard provided the State Bar with a copy of a May 2, 2012,  
18 letter from Carles to Respondent, wherein she requested an explanation why the four (4)  
19 checks were issued from the account.

20       168. On June 4, 2012, the State Bar received a letter from Respondent stating  
21 that he was still unable to locate the savings bonds but he provided a print-out from the  
22 United States Treasury's website that stated the bonds he had listed in the Inventory had  
23 not been cashed and provided the current value of the bonds.

1           169. Respondent's response also stated that he would address the checks issued  
2 from the account under separate cover to Alfano's New Jersey attorney, with a copy of the  
3 letter to the State Bar.

4           170. Upon information and belief, neither the Alfanos nor the State Bar have  
5 received a letter from Respondent addressing the checks.

6           171. Respondent failed to finalize the probate on behalf of the Alfano's and the  
7 family retained attorney Shirley Derke (Derke) to assist them.

8           172. On August 23, 2013, Derke filed a *Petition for Revocation of Letters of*  
9 *Administration and Appointment of Replacement Co-Personal Representative* requesting  
10 that the Court revoke Respondent's Letters of Administration and appoint Derke in his  
11 stead as he has failed to file a proper accounting.

12           173. Respondent was cited to appear before the Probate Commissioner on  
13 September 13, 2013.

14           174. At that hearing, Respondent agreed to resign and provide an accounting to  
15 the Court by October 31, 2013.

16           175. However, it was not until November 25, 2013, that Respondent filed the First  
17 Accounting, wherein he provided a recapitulation of the assets, including the \$85,652.21  
18 cash on hand, \$18,000 in savings bonds and personal property. He also indicated that the  
19 \$3,000 he withdrew was for partial administrative fees of the estate.

20           176. Respondent's accounting was requested to be approved by the court in the  
21 *Petition for Confirmation of First and Final Account; Approval of Administrator's Fees and*  
22 *Final Distribution of the Estate* that was filed on December 24, 2013. Derke requested that  
23 the estate be distributed according to Bertha's Last Will and Testament, which left  
24 everything to her trust.

25           177. The Order approving the petition was entered on January 14, 2014.

1 178. In light of the foregoing, Respondent violated RPC 1.1 (Competence), RPC  
2 1.2 (Scope of Representation), RPC 1.3 (Diligence), RPC 1.4 (Communication), RPC 1.15  
3 (Safekeeping Property), RPC 3.2 (Expediting Litigation), RPC 3.4 (Fairness to Opposing  
4 Party and Counsel), RPC 8.1 (Bar Admission and Disciplinary matters), and RPC 8.4  
5 (Misconduct).

6 WHEREFORE, Complainant prays as follows:

- 7 1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;  
8 2. That Respondent be assessed the costs of the disciplinary proceeding  
9 pursuant to Supreme Court Rule 120(1); and  
10 3. That pursuant to Supreme Court Rule 102, such disciplinary action be taken  
11 by the Southern Nevada Disciplinary Board against Respondent as may be deemed  
12 appropriate under the circumstances.

13 Dated this 21<sup>st</sup> day of Febraury, 2014.

14 STATE BAR OF NEVADA

15  
16 By: 

17 David A. Clark, Bar Counsel  
18 Nevada Bar No. 4443  
19 600 E. Charleston Boulevard  
20 Las Vegas, Nevada 89104  
21 (702) 382-2200  
22  
23  
24  
25

Case Nos. SG10-0429, SG11-1139, SG11-1330



FILED

MAR 19 2015

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD  
STATE BAR OF NEVADA  
BY: [Signature]  
CLERK OF BAR COUNSEL

STATE BAR OF NEVADA,

Complainant,

vs.

SCOTT M. CANTOR, ESQ.,  
Nevada Bar No. 1713

Respondent.

**CONDITIONAL GUILTY PLEA  
IN EXCHANGE FOR A STATED  
FORM OF DISCIPLINE**

Scott M. Cantor ("Respondent"), Bar No. 1713, by and through his attorney, Sean K. Claggett, hereby tenders to bar Counsel for the State Bar of Nevada a Conditional Guilty Plea ("Plea") pursuant to Supreme Court Rule ("SCR") 113(1) and agrees to the imposition of the following Stated Form of Discipline in the above-captioned case.

I.  
**CONDITIONAL GUILTY PLEA**

Through the instant Plea, Respondent agrees and admits as follows:

1. Respondent is now and at all times pertinent herein was a licensed attorney in the State of Nevada.

2. The State Bar filed a Formal Complaint on the above referenced case on February 24, 2014.

3. Respondent filed a Verified Answer to Complaint on April 17, 2014.

4. In accordance with the Stipulation of Facts herein, Respondent pleads guilty and admits that he violated Rules of Professional Conduct ("RPC"), as follows:

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Count 1: SG10-0429 / Bijan Safi:

- RPC 1.1 (Competence),
- RPC 3.2 (Expediting Litigation),
- RPC 3.4 (Fairness to Opposing Party and Counsel),
- RPC 8.1 (Bar Admission and Disciplinary Matters), and

Count 2: SG11-1139 / Marhayra Bermudez

- RPC 1.1 (Competence),
- RPC 1.5 (Fees),
- RPC 1.2 (Scope of Representation),
- RPC 1.3 (Diligence),
- RPC 1.4 (Communication),

Count 3: SG11-1330 / Frank and Robert Alfano

- RPC 1.1 (Competence),
- RPC 1.3 (Diligence),
- RPC 1.15 (Safekeeping Property),
- RPC 3.4 (Fairness to Opposing Party and Counsel),
- RPC 8.1 (Bar Admission and Disciplinary matters), and
- RPC 8.4 (Misconduct).

**AGGRAVATION / MITIGATION**

5. Pursuant to SCR 102.5 (Aggravation and mitigation), the Parties considered the following **aggravating** factors in considering the discipline to be imposed:

- (a) Prior disciplinary offenses,
- (c) A pattern of misconduct,
- (d) Multiple offenses,
- (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders,
- (h) Vulnerability of the victim, and;
- (i) Substantial experience in the practice of law.

6. Pursuant to SCR 102.5 (Aggravation and mitigation), the Parties considered the following **mitigating** factors in considering the discipline to be imposed:

- (b) Absence of dishonest or selfish motive,
- (g) Character and reputation,
- (j) Delay in disciplinary proceedings in relation to the misconduct,
- (k) Interim rehabilitation,
- (m) Remorse, and;
- (n) Remoteness of prior offenses.

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II.  
STIPULATION OF FACTS

The facts stipulated to and agreed upon between Respondent and the State Bar of Nevada in support of this conditional plea are as follows:

COUNT 1  
Case No. SG10-0429 / Bijan Safi

1. On or about August 11, 2010, the State Bar received a grievance from Bijan Safi of BJN, Inc. ("BJN").
2. Safi had provided a pre-settlement loan to Raymond Delillo, Sr. ("Delillo").
3. Delillo was represented by Respondent in his personal injury matter.
4. On February 3, 2005, Safi advanced Delillo \$2,000 at the rate of 15% per month.
5. Delillo passed away on October 27, 2007, prior to the conclusion of his case.
6. Delillo's daughter, Patricia Mertz ("Mertz") was appointed Special Administrator on April 4, 2008.
7. Delillo's matter settled in June 2008.
8. At the time the case settled, Safi claimed that Delillo owed BJN \$26,500.
9. The insurance carrier, Traveler's Insurance (Traveler's) issued a check to Graziadei & Cantor, Mertz and BJN in the amount of \$26,500 in June 2008.
10. However, Traveler's sent the settlement check to the wrong address and was stale-dated by the time Respondent received it two (2) months later in August 2008.
11. In October 2008, Respondent wrote to Safi and informed him of the settlement as well as Delillo's passing.
12. Respondent's letter informed Safi that the amount BJN claimed as of October 2008 exceeded the amount of the settlement, including attorney fees.

1        13. Respondent's letter also informed Safi that his documentation indicated a  
2 loan of \$750 not \$2,000.

3        14. Respondent sent Safi another letter dated December 3, 2008, requesting  
4 that a reduction be made as Delillo's wife was suffering dementia and the money was  
5 needed for her nursing home facility.

6        15. On or about April 1, 2009, after Safi rejected a number of compromises by  
7 Respondent, Respondent informed Safi that he would have to interplead the funds.

8        16. Traveler's reissued Delillo's settlement check on August 13, 2009, again  
9 payable to Graziadei & Cantor, Mertz, and BJN. However, Respondent maintains that this  
10 check was also misdirected by the insurer.

11       17. Respondent had not yet filed the interpleader when Baji submitted his  
12 grievance to the State Bar in August 2010.

13       18. Respondent, in his initial response to the State Bar dated September 10,  
14 2010, acknowledged to the State Bar that he had promised to file an interpleader but had  
15 not done so.

16       19. Respondent indicated that he had acknowledged the loan when it was in the  
17 amount of \$750. However, the \$2,000 amount was written in after he had signed off on  
18 the acknowledgment and the date of his signature was interlined and altered.

19       20. Respondent also indicated in his September 10 response said he would file  
20 an interpleader by October 7, 2010, and would provide the State Bar a file-stamped copy.

21       21. Respondent failed to provide the State Bar a copy of the interpleader and, as  
22 a result, on March 16, 2011, the State Bar sent Respondent another letter requesting  
23 copies of the interpleader, settlement documents, checks and trust account information.

24       22. Respondent responded on April 1, 2011, and provided a copy of the release  
25 and a copy of the check.

1           23.   Respondent stated that an interpleader had not been filed because the law  
2 firm had dissolved.

3           24.   Respondent also claimed that the check became stale-dated because all the  
4 signatures could not be obtained and that he was in the process of requesting another  
5 check.

6           25.   Respondent provided a draft of the interpleader with his April 2011 response.

7           26.   On May 2, 2011, the State Bar sent a letter to Respondent seeking an  
8 update regarding the status of filing the interpleader and obtaining a new check.

9           27.   Respondent's response indicated that it would be filed in a couple of days of  
10 his letter.

11          28.   Respondent indicated that he was requesting another check from Traveler's  
12 counsel, Karl Armstrong ("Armstrong").

13          29.   On May 23, 2011, the State Bar sent an additional follow-up letter to  
14 Respondent as court records revealed the interpleader had not yet been filed.

15          30.   Respondent failed to respond to the State Bar's letter dated May 23, 2011.

16          31.   On June 28, 2011, a reminder letter was sent to Respondent via certified  
17 mail.

18          32.   On July 1, 2011, Respondent responded with a file-stamped copy of the  
19 interpleader on June 3, 2011. The case was titled *Graziadei & Cantor, Ltd., v. Patricia*  
20 *Mertz, et al.*, Case No. A642626 in the Eighth Judicial District Court.

21          33.   Respondent did not begin effecting service of process until September 2011.

22          34.   Respondent's July 1 response also stated that he was waiting for Armstrong  
23 to call him back to get a new check.

24          35.   Respondent had sent a letter to the law firm where Armstrong was previously  
25 employed. However, Respondent never directly called Armstrong.

1        36. On August 10, 2011, a State Bar investigator called Armstrong and inquired  
2 whether he received any communication from Respondent.

3        37. Armstrong informed the State Bar that he had not received any  
4 communication from Respondent.

5        38. The State Bar sent Respondent a letter dated August 10, 2011, providing  
6 him with Armstrong's contact information and advising him that he had ninety (90) days to  
7 ensure that the interpleader was proceeding or the State Bar would seek a formal hearing  
8 in the matter. A status update was calendared for October 10, 2011.

9        39. On October 10, 2011, Respondent sent a letter to the State Bar stating that  
10 "based upon my schedule, and the need to attend to a personal medical matter, please  
11 allow me to respond to the above-captioned matter by Friday, October 14, 2011."

12        40. By February 24, 2012, the date that the State Bar filed the formal complaint,  
13 Respondent had failed to respond directly to the State Bar's letter of August 10, 2011.

14        41. The State Bar was copied on a letter Respondent sent to Safi's attorney, H.  
15 Stan Johnson, dated January 12, 2012.

16        42. According to the letter, Respondent was unsuccessful in serving BJN and  
17 had filed a motion for enlargement of time to serve process.

18        43. Respondent stated he was in the process of serving the client by publication.

19        44. Respondent also stated in the letter that he has been unsuccessful in  
20 obtaining a replacement check for the stale-dated check.

21        45. Meanwhile, BJN, through their attorney Brian Morris ("Morris"), filed a *Motion*  
22 *for Disbursement of Interpleader Funds* because it had taken three (3) years for  
23 Respondent to file the interpleader action and a year had already passed since the initial  
24 filing. Respondent maintains that he was in active negotiation with BJN and was  
25 attempting to make a good-faith effort to resolve the dispute between BJN and his client.

1           46.   Respondent did not file an Opposition to the motion.

2           47.   On September 5, 2012, an Order granting the motion was entered and  
3 ordered Respondent to distribute \$26,500 to BJN.

4           48.   The Notice of Entry of Order was entered on September 20, 2012.

5           49.   Respondent failed to comply with the order and BJN subsequently filed an  
6 *Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M.*  
7 *Cantor, Esq., Should Not Be Held in Contempt, Sanctions Issued, and Order Directing*  
8 *Compliance With Prior Court Order On Order Shortening Time* on November 14, 2012.

9           50.   The hearing was scheduled for November 27, 2012.

10          51.   On November 25, 2012, Respondent filed a *Motion to Set Aside Order*  
11 *Granting Disbursement of Interpleader Funds* stating that 1) Morris was premature in filing  
12 the Motion to Disburse funds when Mertz had not filed an Answer to the lawsuit and 2)  
13 Respondent was not properly served with the motion, as all the dates/ times were blank.

14          52.   On January 8, 2013, a Stipulation and Order was entered on wherein it was  
15 agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be  
16 paid to the DeLillio Estate, \$8,833.33 would be paid to Respondent and \$8,833.33 would  
17 be paid to Safi.

18          53.   Further, Travelers was ordered to reissue the check in the amount of  
19 \$26,500 to Respondent to be held in his trust account pending approval of the probate  
20 court.

21          54.   On March 19, 2013, BJN filed an *Application for Order to Show Cause Why*  
22 *Graziadei & Cantor and/or Cantor should not be held in contempt, sanctions issued, and*  
23 *order directing compliance with prior court order.*

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1        55. According to the application, BJN had not received a response from  
2 Respondent regarding an estimated time frame when they could anticipate receiving the  
3 money that was ordered in the court's order of January 8, 2013.

4        56. Respondent filed an Affidavit in opposition to the application for order to  
5 show cause on March 27, 2013. In his affidavit, Respondent stated that he had not  
6 received the re-issue of Traveler's stale-dated check and on March 14, 2013 called  
7 Traveler's and learned that the check had been inadvertently mailed to the wrong  
8 address.

9        57. Respondent received the check on March 19, 2013.

10       58. Respondent stated that he would apply for ratification and approval of  
11 distribution of settlement proceeds.

12       59. At the hearing on April 9, 2013, the Court denied the motion for sanctions but  
13 granted the motion seeking compliance with the order. The matter was set for status  
14 check on May 7, 2013, regarding the check distribution. It was noted that if monies had  
15 been distributed, then no appearances would be necessary.

16       60. The court ordered Respondent to give the settlement check to Morris.

17       61. On April 12, 2013, Respondent informed Morris that Mertz would first have to  
18 apply to probate court for ratification and approval for the distribution of the settlement  
19 proceeds.

20       62. Respondent informed Morris that he should not disburse funds without  
21 probate approval.

22       63. A hearing was held on May 7, 2013. Respondent was not present but Morris  
23 was present for BJN. Morris informed the court that the check was in his possession, had  
24 been endorsed but the bank would not accept it as his firm was not named on the check.

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1           64. Morris advised the Court that Delillo's estate had an open probate matter as  
2 and Respondent had informed that Morris to not distribute funds without the probate  
3 court's permission.

4           65. The court noted that counsel for BJN had been very patient and ordered that  
5 sanctions in the amount of \$1,000 per day will begin if the money has not been distributed  
6 by Friday, May 10, 2013.

7           66. On May 7, 2013, the \$26,500 settlement check was deposited into  
8 Respondent's Nevada State Bank trust account ending in 2914.

9           67. On Friday, May 9, 2013, BJN received a Cashier's Check in the amount of  
10 \$8,333.33. This check was issued from Respondent's trust account ending in 2914.

11           68. At the time, the probate court had not adjudicated the matter.

12           69. On May 24, 2013, a petition for ratification and approval of distribution of  
13 settlement proceeds was filed *In the Matter of the Estate of Raymond DeLillo, Sr.*, Case  
14 No. P061754.

15           70. The distribution was approved at a hearing held on June 21, 2013.

16           71. A State Bar investigator called Mertz on August 1, 2013, to find out if she  
17 received Delillo's portion of the settlement proceeds. She had not.

18           72. Mertz was unaware that Respondent had distributed estate funds on May 9,  
19 2013 without approval from the probate court.

20           73. According to bank records received by the State Bar, on August 6, 2013,  
21 Respondent issued checks to Mertz, the other heirs and a lienholder. These checks  
22 totaled \$8,798.75.

23           74. In addition, Respondent used his portion of the settlement proceeds  
24 (\$8,833.33) to pay Raymond Delillo, Jr. what appears to be settlement from a personal  
25 injury claim with a date of loss of May 3, 2002. Respondent also paid lienholders in

1 relation to Delillo, Jr.'s case and referenced the same date of loss. Those checks total  
2 \$9,937.20.

3 **COUNT 2**  
4 **Case No. SG11-1139 / Marhayra Bermudez**

5 75. In April 2009, Marhayra Bermudez ("Bermudez") retained the firm Graziadei  
6 & Cantor to represent her in a joint petition for divorce. Respondent was the primary  
7 attorney responsible for the matter.

8 76. Respondent's fee was \$750 plus court fees.

9 77. Bermudez did not have the money initially and it was agreed she could make  
10 payments.

11 78. By May 28, 2009, Bermudez had paid \$440 toward her retainer.

12 79. In total, Bermudez paid Respondent the sum of \$1,030 between April 2009  
13 and January 2010.

14 80. By May 2009, Bermudez had provided Respondent with all the necessary  
15 paperwork, including proof of the mandatory seminar for separating parents (hereinafter  
16 referred to as "COPE").

17 81. Bermudez had not heard from Respondent or his office since May 2009, so  
18 on July 16, 2009, Bermudez called Respondent's office to see if the documents were  
19 ready to sign.

20 82. She was told by the paralegal to come in and sign them.

21 83. Bermudez was led to believe by Respondent's office that the paperwork was  
22 subsequently filed and she called every month to find out the status.

23 84. After a few months, Bermudez went to the office and met with Respondent.

24 85. Bermudez reviewed the documents, which had not been filed.  
25

1       86.     While Bermudez was reading the documents, she noticed an error that she  
2 brought to Respondent's attention. The real property was omitted from the petition.

3       87.     The documents were corrected and signed at that time.

4       88.     Afterwards, Bermudez called Respondent's office every month to see if the  
5 decree was issued.

6       89.     Bermudez was initially informed that they had not heard from the court.

7       90.     In March 2011, Bermudez was informed that she had to come back into the  
8 office and resign the documents as "the court kicked the paperwork because it was two  
9 years old." Respondent was also informed by the law clerk that other problems with the  
10 proposed Decree included calculation of child support and how the living arrangements  
11 might affect visitation.

12       91.     A month later, Bermudez called Respondent's office to find out if the decree  
13 was signed.

14       92.     Bermudez was told that the "courts had kicked back the package again  
15 because there were some mistakes in the divorce decree."

16       93.     According to the pleadings obtained by the State Bar from Family Court, the  
17 Joint Petition was signed by Bermudez on October 2, 2009 according to Bermudez's date  
18 of signature and August 17, 2009 for her husband.

19       94.     However, this petition was not filed until November 9, 2010, over one (1)  
20 year after being signed by the notaries.

21       95.     The Joint Petition had conditions such as revisiting overnight visitation in  
22 eight (8) months, which had elapsed prior to the petition's filing.

23       96.     The COPE certificates were completed in May 2009, but these were not filed  
24 until January 27, 2011.

25

1        97. The Resident Witness Affidavit attesting that the parties had been resided in  
2 Nevada for the prior six (6) weeks was signed in September 2009 but was not filed until  
3 January 27, 2011.

4        98. Respondent signed the Request for Summary Disposition on April 26, 2010,  
5 but the pleading was not filed until January 27, 2011.

6        99. Given that Respondent filed the Joint Petition more than one (1) year after it  
7 had been signed, the District Court issued Respondent a memo on January 31, 2011,  
8 informing him that the filed documents were too old to be processed as conditions may  
9 have changed since the parties signed the Joint Petition, and specifically noted the living  
10 arrangement issue as one of the concerns.

11        100. The District Court's Memo to Respondent further indicated that the 2009  
12 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed  
13 in 2011.

14        101. The District Court's memo also noted that the Joint Petition contained  
15 mathematical errors in regard to child-support calculations (listed \$62.50 weekly and  
16 \$541.67 monthly) and Respondent was directed to reevaluate the child support  
17 calculations. Respondent maintains that he communicated to the law clerk that there were  
18 no errors in the calculations.

19        102. On April 21, 2011, the District Court returned the Decree of Divorce that  
20 Respondent had submitted to the Department D's chambers as Respondent had failed to  
21 make the changes indicated in the January 31 memo. Respondent maintains that he did  
22 not make changes to the calculations because he determined the calculations were  
23 correct.

24        103. On August 23, 2011, Bermudez spoke with Respondent, who informed  
25 Bermudez that he was going to personally go to the court to find out what happened.

1           104. Respondent instructed her to call back after 4:00 p.m. the next day.

2           105. Bermudez told Respondent during that conversation that she was going to  
3 find another lawyer because it had taken two (2) years to file a joint petition for a divorce  
4 and a decree had not been signed.

5           106. In response, Respondent told her that even if she went to a lawyer, it would  
6 take time for the divorce to go through.

7           107. Bermudez called back the next day, August 24, 2011, and was unable to  
8 speak with either Respondent or his assistant.

9           108. She was told Respondent would not be back in the office until August 29,  
10 2011.

11           109. On November 17, 2011, the Court entered a Notice of Entry of Order of  
12 Dismissal without Prejudice pursuant to EDCR 5.90 because the matter had been pending  
13 longer than one (1) year and no action had been taken for more than six (6) months.

14           110. Bermudez then filed, in proper person, her own joint petition for divorce on  
15 February 1, 2012,

16           111. Bermudez's Decree was entered on February 23, 2012.

17           112. The State Bar sent Respondent a letter of investigation via certified mail  
18 return receipt requested on September 30, 2011.

19           113. On October 10, 2011, the State Bar received a fax from Respondent  
20 requesting an extension of an additional fifteen (15) days to respond due to a medical  
21 matter.

22           114. The State Bar granted the extension but Respondent failed to respond.

23           115. On December 9, 2011, the State Bar sent a second letter to Respondent  
24 seeking a response.

25

1 116. Respondent failed to respond to the State Bar's letter dated December 9,  
2 2011.

3 117. On June 6, 2012, Respondent faxed to the Office of Bar Counsel a copy of  
4 the State Bar of Nevada Fee Dispute Release wherein the Respondent agreed to refund  
5 \$750 to Bermudez.

6 118. Respondent did respond to Fee Dispute and believed that his responses  
7 there satisfied and resolved the issues with the Office of Bar Counsel, as well.

8 **COUNT 3**  
9 **Case No. SG11-1330 / Frank and Robert Alfano**

10 119. The State Bar received a grievance from Frank and Robert Alfano ("Frank  
11 and Robert" or the "Alfanos").

12 120. Their mother, Bertha Alfano ("Bertha") was under the guardianship of the  
13 Public Guardian.

14 121. Bertha died on July 11, 2008, dissolving the guardianship.

15 122. Frank and Robert were heirs to the Bertha's estate.

16 123. The Alfanos subsequently retained the firm of Cantor & Graziadei to handle  
17 the probate for Bertha's estate. Graziadei acted as the attorney for the estate and  
18 Respondent acted as the Administrator for the estate.

19 124. On July 10, 2009, Bertha's will was admitted to probate in *The Matter of*  
20 *Bertha Alfano*, Eighth Judicial District Court Case No. P065829.

21 125. Respondent filed an Inventory on April 14, 2010.

22 126. This Inventory identified nine (9) savings bonds totaling \$18,000 and a bank  
23 account at Nevada State Bank with a value of \$88,377.47.

24 127. A Notice to Creditors was filed July 9, 2010, with the Affidavit of Publication  
25 being filed on July 26, 2010.

1       128. From December 2009 to December 2010, Frank and Robert spoke with  
2 Grazaidei on the phone in an effort to settle the estate. Respondent maintains that he did  
3 not speak with them.

4       129. On January 5, 2011, Robert sent Respondent a letter requesting that  
5 Respondent hasten processing the Alfano estate.

6       130. On January 10, 2011, Respondent sent a letter to the Alfanos wherein he  
7 indicated that he would be filing a First and Final Accounting and Petition for Distribution.

8       131. In that letter, Respondent stated, "it is not complicated but will take  
9 approximately two weeks to complete and file."

10       132. However, Respondent failed to file the First and Final Accounting, which  
11 remains unfiled as of the date of this Complaint. Respondent maintains that he was not  
12 the attorney of record and took direction from the attorney of record, which was Grazaidei.

13       133. On or about July 1, 2011, Frank and Robert retained attorney Alice Jacobs  
14 Carles ("Carles"), an attorney in New Jersey, the state in which they reside, to assist them  
15 with the probate.

16       134. Carles wrote to Respondent on July 1, 2011, after being unable to reach him  
17 on the phone.

18       135. On July 12, 2011, Respondent responded to Carles stating he would file the  
19 First and Final Accounting within ten (10) calendar days.

20       136. However, Respondent never did so.

21       137. On August 16, 2011, the State Bar sent a letter of investigation to  
22 Respondent via certified mail.

23       138. On August 24, 2011, Respondent sent a letter to the State Bar requesting an  
24 additional ten (10) days to respond because he needed to attend a personal matter in  
25 Reno.



1           139. However, Respondent still failed to respond, even with the extension.

2           140. As a result, on October 13, 2011, the State Bar sent Respondent a reminder  
3 letter via certified mail advising him that failure to respond could be considered a separate  
4 disciplinary violation. This return receipt card was returned signed by Cate Talbot.  
5 Respondent again failed to respond.

6           141. On December 9, 2011, a final letter was sent to Respondent by the State Bar  
7 via certified mail. This card was returned signed by Dellos Rico, who is an employee of  
8 the law firm in which he leased space.

9           142. Although Respondent was directed to respond within ten (10) days,  
10 Respondent did not respond to the State Bar until April 2012.

11           143. On March 9, 2012, the State Bar sent a letter to Respondent's former law  
12 partner, George Graziadei ("Graziadei"), requesting information regarding the estate.

13           144. Respondent responded on Graziadei's behalf to all letters the State Bar sent  
14 Graziadei seeking information. Graziadei passed away in the interim.

15           145. The State Bar subpoenaed the Estate's bank records at Nevada State Bank  
16 on March 12, 2012.

17           146. Respondent was the signer on the Estate Account.

18           147. The initial deposit for Alfano's estate was \$88,363.31 from a check issued by  
19 the Public Guardian's office.

20           148. In December 2010, four (4) checks totaling \$3,000 were issued from the  
21 Estate's account. Respondent maintains that these checks were issued at the direction of  
22 Grazaidei who was counsel for the Estate.

23           149. The checks were all made payable to Respondent as Administrator of the  
24 Estate and the checks each referenced that they were an administrator's fee.

25           150. Such fees are required to be first approved by the probate court.

1       151. There were no court orders approving the disbursement

2       152. All four (4) checks were signed by Respondent.

3       153. A subpoena was subsequently served upon Respondent requesting that he  
4 provide accounting documents and a copy of the *Alfano* file.

5       154. On April 3, 2012, Respondent, in a letter to the State Bar, stated that once  
6 he and Graziadei dissolved their firm, he stopped receiving the mail from the bank.

7       155. Respondent acknowledged that it was his fault that the bank did not forward  
8 the mail to him and that he would correct the matter

9       156. In regard to the nine (9) savings bonds totaling \$18,000, Respondent stated  
10 that he did not have them in his possession because when he left the office, he left some  
11 items behind, including the bonds. Respondent said he would check his storage unit to  
12 locate the bonds.

13       157. Respondent said he intended to cooperate with the State Bar's investigation  
14 and complete the First and Final Accounting and distribute the estate.

15       158. On April 19, 2012, Respondent provided a response to the State Bar  
16 subpoena, wherein he provided bank records and said he was still in possession of  
17 personal items belonging to the estate.

18       159. However, Respondent was unable to locate the savings bonds.

19       160. Frank and Richard copied the State Bar on a May 2, 2012, letter from Carles  
20 to Respondent, wherein she requested an explanation why the four (4) checks were  
21 issued from the account.

22       161. On June 4, 2012, the State Bar received a letter from Respondent stating  
23 that he was still unable to locate the savings bonds but he provided a print-out from the  
24 United States Treasury's website that stated the bonds he had listed in the Inventory had  
25 not been cashed and provided the current value of the bonds.

1       162. Respondent's response also stated that he would address the checks issued  
2 from the account under separate cover to Alfano's New Jersey attorney, with a copy of the  
3 letter to the State Bar.

4       163. Neither the Alfanos nor the State Bar ever received a letter from Respondent  
5 addressing the checks.

6       164. Respondent failed to finalize the probate on behalf of the Alfanos and the  
7 family retained attorney Shirley Derke (Derke) to assist them.

8       165. On August 23, 2013, Derke filed a *Petition for Revocation of Letters of*  
9 *Administration and Appointment of Replacement Co-Personal Representative* requesting  
10 that the Court revoke Respondent's Letters of Administration and appoint Derke in his  
11 stead as he failed to file a proper accounting.

12       166. Respondent was cited to appear before the Probate Commissioner on  
13 September 13, 2013.

14       167. At that hearing, Respondent agreed to resign and prove an accounting to the  
15 Court by October 31, 2013.

16       168. However, it was not until November 25, 2013, that Respondent filed the First  
17 Accounting, wherein he provided a recapitulation of the assets, including the \$85,652.21  
18 cash on hand, \$18,000 in savings bonds and personal property. He also indicated that the  
19 \$3,000 he withdrew was for partial administrative fees of the estate.

20       169. Respondent's accounting was required to be approved by the court in the  
21 *Petition for Confirmation of First and Final Account; Approval of Administrator's Fees and*  
22 *Final Distribution of the Estate* that was filed on December 24, 2013. Derke requested that  
23 the estate be distributed according to Bertha's Last Will and Testament, which left  
24 everything to her trust.  
25

1 170. The Order approving the petition was entered on January 14, 2014. An  
2 amended order that directed the saving bonds be re-issued to the estate was filed  
3 February 7, 2014.

#### 4 INTERIM REHABILITATION

5 Part of Respondent's problems resulted from his partnership with Grazaidei.  
6 Grazaidei was the primary partner who made all the decisions. He did not have a good  
7 office plan in place and did not have good help employed in the office. Respondent  
8 recognized that the office was in trouble and he left the partnership to open his own firm.

9 When Respondent opened his own office, he initially leased space from attorney  
10 Sean Claggett. As part of a good faith effort to rehabilitate and ensure that this does not  
11 happen again, Claggett assisted Respondent in evaluating his office procedure.  
12 Respondent has taken steps to change specific things in his office such as:

13 a. **Safekeeping property.** Respondent is the sole signatory on trust  
14 account and is the only one who has access to the checkbooks. He has  
15 purchased QuickBooks and will use that program to reconcile and  
16 monitor his accounts.

17 b. **Non-lawyer assistants.** Respondent personally manages his office  
18 now. He has a very good assistant, Aida. He personally signs all  
19 correspondence from the office. He meets with every new client and  
20 establishes the attorney-client relationship.

21 c. **Business Plan.** Respondent did not have business plan. He has since  
22 obtained Business Plan Pro. He has implemented: case spreadsheets  
23 that show the stage of the file; to do lists; checklists to assist him in his  
24 practice; and synced his calendar to his office, home and phone so he  
25

1 will not miss an appointment or deadline. Respondent has taken  
2 business seminars and is part of a business group that meets monthly.

3 d. **Case management.** Respondent has a caseload of 30-40 active cases  
4 and does not want the caseload to get much larger. His area of  
5 practice is 30% personal injury, 30% probate, 30% family law and 10%  
6 business litigation and criminal.

7  
8 **III.**  
**STATED FORM OF DISCIPLINE**

9 Therefore, based upon the above, Respondent and his counsel agree to the  
10 following imposition of Discipline and related conditions:

11 Pursuant to the Conditional Guilty Plea and Stipulation of Facts set forth above,  
12 Respondent, his counsel and the State Bar agree that, Respondent shall be **SIX MONTH**  
13 **AND ONE DAY SUSPENSION, STAYED**, with the following conditions:

14 1. **PROBATION for ONE (1) YEAR** with quarterly reports submitted to  
15 Bar Counsel. During this time, Respondent shall stay out of trouble and not receive any  
16 grievances that result in actual discipline, which would be considered a violation of  
17 probation. The probation will start the day the plea is accepted by the Panel.

18 2. Respondent shall obtain a Mentor that is approved by Bar Counsel to  
19 monitor Respondent's practice. The Mentor shall be a Nevada licensed attorney in good  
20 standing. The Mentor will monitor the active cases and ensure that Respondent's cases  
21 are properly filed, calendared and clients are advised. Further, the Mentor will ensure  
22 that Respondent is maintaining a proper accounting system and will review the trust  
23 account. The Mentor shall submit a quarterly report to Bar Counsel about Respondent's  
24 progress and any issues that may have developed.  
25

3. Respondent shall submit a Quarterly Report to Bar Counsel providing an update as to his place of employment, area(s) of practice, his caseload, and any issues that may have developed.

4. Respondent shall pay the actual costs of the disciplinary proceedings, excluding Bar Counsel and staff salaries, within one (1) year.

IV.

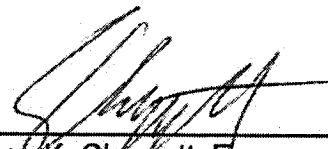
APPROVAL OF RESPONDENT

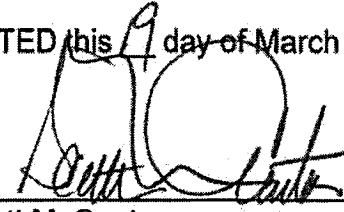
Having read the Plea and being satisfied with it, the same is hereby approved by Respondent.

Respondent understands that he could discuss the Plea with counsel and fully understands the terms and conditions set forth herein.

DATED this 19 day of March 2015.

DATED this 19 day of March 2015.

  
Sean K. Claggett, Esq.  
Nevada Bar No. 8407  
8751 W. Charleston Blvd., #220  
Las Vegas, NV 89117  
Counsel for Respondent

  
Scott M. Cantor  
Nevada Bar No. 1713  
Respondent


V.

APPROVAL OF BAR COUNSEL

Having read the Plea tendered by Respondent and being satisfied with the contents therein, I hereby approve and recommend the Plea for approval by the Hearing Panel.

DATED this 19 day of March 2015.

STATE BAR OF NEVADA

  
David A. Clark, Bar Counsel  
Nevada Bar No. 4443  
600 East Charleston Boulevard  
Las Vegas, Nevada 89104

Case Nos. SG10-0429, SG11-1139, SG11-1330



FILED

APR 14 2015

STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD  
BY: [Signature]  
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

Complainant,

vs.

SCOTT M. CANTOR, ESQ.,  
Nevada Bar No. 1713

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDATION**

This matter came before a designated Formal Hearing Panel of the Southern Nevada Disciplinary Board ("Panel") at 9:00 a.m. on March 19, 2015, for consideration of the Conditional Guilty Plea in Exchange for a Stated Form of Discipline ("Plea") regarding Scott M. Cantor, Esq., Nevada Bar No. 1713 ("Respondent"). The Panel consisted of Chair Paul "Luke" Puschnig, Esq., Peter Angulo, Esq., and Bob Valdez, laymember. Bar Counsel David A. Clark represented the State Bar of Nevada ("State Bar"). Respondent was present and was represented by Sean Claggett, Esq.

Pursuant to Supreme Court Rule ("SCR") 113, Respondent tendered a proposed Plea which contains Bar Counsel's approval and recommendation for approval by the Panel. The Plea also contains the approval of Respondent and his counsel. A true and correct copy of the filed Plea is attached to these Findings and Recommendations as Exhibit 1.

The State Bar submitted an affidavit regarding Respondent's licensure and discipline history as Exhibit 2, which was admitted without objection. Respondent did not submit any



1 exhibits or produce witnesses. Respondent provided testimony on his own behalf and was  
2 questioned by members of the Panel.

3 Based upon the pleadings on file herein, the proposed Plea, and the testimony and  
4 evidence elicited at the hearing, the Panel issues the following Findings of Fact,  
5 Conclusions of Law, and Recommendation:

6 **FINDINGS OF FACT.**

7 1. Respondent is now and at all times pertinent herein was a licensed attorney  
8 in the State of Nevada with his principal place of business in Clark County, Nevada.

9 2. The State Bar filed a Formal Complaint on the above referenced case on  
10 February 24, 2014.

11 3. Respondent filed a Verified Answer to Complaint on April 17, 2014.

12 4. The Stipulation of Facts, as set forth in Part II of the proposed Plea,  
13 accurately reflects this Panel's findings regarding the facts and circumstances pertinent to  
14 these proceedings.

15 5. Respondent entered into the proposed Plea knowingly and voluntarily and  
16 was not subject to any duress or coercion in doing so.

17 6. Respondent's stipulation to the violations set forth in the Plea is hereby  
18 adopted.

19 **CONCLUSIONS OF LAW.**

20 Based upon the foregoing Findings of Fact, the Panel hereby issues the following  
21 Conclusions of Law:

22  
23 1. The Southern Nevada Disciplinary Board has jurisdiction over Respondent  
24 and the subject matter of these proceedings pursuant to SCR 99.

1           2.     By unanimous vote, the Panel accepted the Plea which was submitted in  
2 accordance with SCR 105(2)(d) and SCR 113.

3           3.     The Panel finds Respondent guilty of violating the Rules of Professional  
4 Conduct ("RPC"), as follows:

5           **Count 1: SG10-0429 / Bijan Safi:**

- 6           • RPC 1.1 (Competence),  
7           • RPC 3.2 (Expediting Litigation),  
8           • RPC 3.4 (Fairness to Opposing Party and Counsel), and  
9           • RPC 8.1 (Bar Admission and Disciplinary Matters).

10          **Count 2: SG11-1139 / Marhayra Bermudez**

- 11          • RPC 1.1 (Competence),  
12          • RPC 1.5 (Fees),  
13          • RPC 1.2 (Scope of Representation),  
14          • RPC 1.3 (Diligence), and  
15          • RPC 1.4 (Communication).

16          **Count 3: SG11-1330 / Frank and Robert Alfano**

- 17          • RPC 1.1 (Competence),  
18          • RPC 1.3 (Diligence),  
19          • RPC 1.15 (Safekeeping Property),  
20          • RPC 3.4 (Fairness to Opposing Party and Counsel),  
21          • RPC 8.1 (Bar Admission and Disciplinary matters), and  
22          • RPC 8.4 (Misconduct).

23          4.     The Panel also approves the DISMISSAL of the following Rule violations:

24          **Count 1: SG10-0429 / Bijan Safi:**

- 25          • RPC 1.3 (Diligence),  
26          • RPC 1.4 (Communication),  
27          • RPC 1.15 (Safekeeping Property), and  
28          • RPC 8.4 (Misconduct).

29          **Count 2: SG11-1139 / Marhayra Bermudez**

- 30          • RPC 1.15 (Safekeeping Property),  
31          • RPC 1.16 (Declining or Terminating Representation),  
32          • RPC 3.2 (Expediting Litigation),  
33          • RPC 8.1 (Bar Admission and Disciplinary matters), and  
34          • RPC 8.4 (Misconduct).

35          **Count 3: SG11-1330 / Frank and Robert Alfano**

- 36          • RPC 1.2 (Scope of Representation),

- RPC 1.4 (Communication), and
- RPC 3.2 (Expediting Litigation).

5. Pursuant to SCR 102.5(1) (Aggravation and mitigation), the Panel also found the following **aggravating** factors in considering the discipline to be imposed:

- (a) Prior disciplinary offenses,
- (c) A pattern of misconduct,
- (d) Multiple offenses,
- (e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders,
- (h) Vulnerability of the victim, and;
- (i) Substantial experience in the practice of law.

6. Pursuant to SCR 102.5(2) (Aggravation and mitigation), the Panel also found the following **mitigating** factors in considering the discipline to be imposed:

- (b) Absence of dishonest or selfish motive,
- (g) Character and reputation,
- (j) Delay in disciplinary proceedings in relation to the misconduct,
- (k) Interim rehabilitation,
- (m) Remorse, and;
- (n) Remoteness of prior offenses.

#### RECOMMENDATION.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Panel hereby recommends that Respondent be sanctioned as follows:

Respondent shall receive a **SIX MONTH AND ONE DAY SUSPENSION, STAYED**, with the following conditions:

1. **PROBATION for ONE (1) YEAR** with quarterly reports submitted to Bar Counsel. During this time, Respondent shall stay out of trouble and not receive any grievances that result in actual discipline, which would be considered a violation of probation. The probation will start the day the plea is accepted by the Panel.

2. Respondent shall obtain a Mentor that is approved by Bar Counsel to monitor Respondent's practice. The Mentor shall be a Nevada licensed attorney in good standing. The Mentor will monitor the active cases and ensure that Respondent's cases

1 are properly filed, calendared and clients are advised. Further, the Mentor will ensure that  
2 Respondent is maintaining a proper accounting system and will review the trust account.  
3 The Mentor shall submit a quarterly report to Bar Counsel about Respondent's progress  
4 and any issues that may have developed.

5 3. The mentoring agreement shall be executed by Respondent and the  
6 Mentor within thirty (30) days of this hearing, no later than Monday, April 20, 2015.

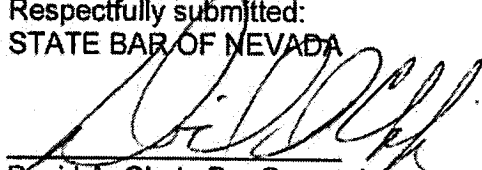
7 4. Respondent shall submit a Quarterly Report to Bar Counsel providing an  
8 update as to his place of employment, area(s) of practice, his caseload, and any issues that  
9 may have developed.

10 5. Respondent shall pay the actual costs of the disciplinary proceedings,  
11 excluding Bar Counsel and staff salaries, within one (1) year.

12 DATED this 14th day of April 2015.

13   
14 Paul "Luke" Puschnig, Esq., Chair  
Southern Nevada Disciplinary Panel

15 Respectfully submitted:  
16 STATE BAR OF NEVADA

17   
18 David A. Clark, Bar Counsel  
19 Nevada Bar No. 4443  
600 E. Charleston Blvd.  
20 Las Vegas, NV 89104  
21  
22  
23  
24  
25

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*Nev. Rules of Prof'l Conduct 1.1*

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

Nev. Rules of Prof'l Conduct 1.1 (2015)

Review court orders which may amend this\_Rule.

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06

**NOTES:** MODEL RULE COMPARISON--2006 --Rule 1.1 (formerly Supreme Court Rule 151) is the same as ABA Model Rule 1.1.

CASE NOTES

EDITOR'S NOTE. --Some of the following cases were decided under former similar rules.

FAILURE TO NEGOTIATE AND INVESTIGATE. --Attorney's failure to attempt to negotiate for reduction of personal injury clients' medical bills and to adequately investigate a company to whom he referred the clients for that service was incompetence. In re Discipline of Laub, 2008 Nev. LEXIS 1219 (Jan. 9, 2002).

REMOVAL AS COUNSEL OF RECORD. --Where, in an appeal of a second degree murder conviction, the statement of facts in the appellant's opening brief consisted of only one-half page, although the trial transcript was over 700 pages long, the statements in the appellate brief were conclusory, and unsupported by any argument, the appellant's argument failed to provide any citations to the record on appeal or the trial transcript, and counsel for the appellant failed to file a reply brief to distinguish the state's arguments or to otherwise rebut them, the appellant's counsel was removed as counsel of record, counsel was ordered to pay a \$1,000 fine to the county and to return to the county any expenses and fees received, and the district court was informed of the lack of diligence and professionalism demonstrated by the attorney in prosecuting

the appeal. Cuzdey v. State, 103 Nev. 575, 747 P.2d 233 (1987).

Where firm has failed to file a timely brief for the second time in one year after being appointed as counsel, it was proper for the court to remove the firm as counsel for appellant, remand this matter to the district court for the appointment of new counsel, impose monetary sanctions against counsel, direct that the firm be removed from the criminal appointment list for the Eighth Judicial District Court, and refer this matter to the State Bar of Nevada for further investigation. Burke v. State, 110 Nev. 1366, 887 P.2d 267 (1994).

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

## Nev. Rules of Prof'l Conduct 1.2 (2016)

Review court orders which may amend this\_Rule.

## Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

**HISTORY:** Added eff. 5-1-06**NOTES:** MODEL RULE COMPARISON--2006 --Rule 1.2 (formerly Supreme Court Rule 152) is the same as ABA Model Rule 1.2.Service: **Get by LEXSTAT®**

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Representation and Allocation of Authority Between Client and Lawyer**

Citation: **Nev. Rules of Prof'l Conduct 1.2**

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

## Nev. Rules of Prof'l Conduct 1.3 (2016)

Review court orders which may amend this Rule.

## Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06**NOTES:** MODEL RULE COMPARISON--2006 --Rule 1.3 (formerly Supreme Court Rule 153) is the same as ABA Model Rule 1.3.Service: **Get by LEXSTAT®**TOC: Nevada Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined > NEVADA RULES OF PROFESSIONAL CONDUCT > CLIENT-LAWYER RELATIONSHIP > **Rule 1.3. Diligence**Citation: **Nev. Rules of Prof'l Conduct 1.3**

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

## Nev. Rules of Prof'l Conduct 1.4 (2016)

Review court orders which may amend this\_Rule.

## Rule 1.4. Communication

## (a) A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) Keep the client reasonably informed about the status of the matter;

(4) Promptly comply with reasonable requests for information; and

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) *Lawyer's Biographical Data Form.* Each lawyer or law firm shall have available in written form to be provided upon request of the State Bar or a client or prospective client a factual statement detailing the background, training and experience of each lawyer or law firm.

(1) The form shall be known as the "Lawyer's Biographical Data Form" and shall contain the following fields of information:

(i) Full name and business address of the lawyer.

- (ii) Date and jurisdiction of initial admission to practice.
  - (iii) Date and jurisdiction of each subsequent admission to practice.
  - (iv) Name of law school and year of graduation.
  - (v) The areas of specialization in which the lawyer is entitled to hold himself or herself out as a specialist under the provisions of Rule 7.4.
  - (vi) Any and all disciplinary sanctions imposed by any jurisdiction and/or court, whether or not the lawyer is licensed to practice law in that jurisdiction and/or court. For purposes of this Rule, disciplinary sanctions include all private reprimands imposed after March 1, 2007, and any and all public discipline imposed, regardless of the date of the imposition.
  - (vii) If the lawyer is engaged in the private practice of law, whether the lawyer maintains professional liability insurance, and if the lawyer maintains a policy, the name and address of the carrier.
- (2) Upon request, each lawyer or law firm shall provide the following additional information detailing the background, training and experience of each lawyer or law firm, including but not limited to:
- (i) Names and dates of any legal articles or treatises published by the lawyer, and the name of the publication in which they were published.
  - (ii) A good faith estimate of the number of jury trials tried to a verdict by the lawyer to the present date, identifying the court or courts.
  - (iii) A good faith estimate of the number of court (bench) trials tried to a judgment by the lawyer to the present date, identifying the court or courts.
  - (iv) A good faith estimate of the number of administrative hearings tried to a conclusion by the lawyer, identifying the administrative agency or agencies.
  - (v) A good faith estimate of the number of appellate cases argued to a court of appeals or a supreme court, in which the lawyer was responsible for writing the brief or orally arguing the case, identifying the court or courts.
  - (vi) The professional activities of the lawyer consisting of teaching or lecturing.
  - (vii) The names of any volunteer or charitable organizations to which the lawyer belongs, which the lawyer desires to publish.
  - (viii) A description of bar activities such as elective or assigned committee positions in a recognized bar organization.
- (3) A lawyer or law firm that advertises or promotes services by written communication not involving solicitation as prohibited by Rule 7.3 shall enclose with each such written communication the information described in paragraph (c)(1)(i) through (v) of this Rule.
- (4) A copy of all information provided pursuant to this Rule shall be retained by the lawyer or law firm for a period of 3 years after last regular use of the information.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06; Amended eff. 9-1-07; Amended 10-22-08, eff. 11-21-08

**NOTES:** MODEL RULE COMPARISON--2007 --Rule 1.4 (formerly Supreme Court Rule 154) is the

same as ABA Model Rule 1.4, except that the 2007 amendments include language in paragraph (c) that was previously part of repealed Rule 7.2A(a) through (d) and (f) (formerly Supreme Court Rule 196.5) which is Nevada-specific language and has no counterpart in the Model Rules.

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**Rule 1.4. Communication**

Citation: **Nev. Rules of Prof'l Conduct 1.4**

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*Nev. Rules of Prof'l Conduct 1.5*

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

Nev. Rules of Prof'l Conduct 1.5 (2016)

Review court orders which may amend this\_Rule.

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services;  
and
- (8) Whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate

of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement:

(1) The method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated;

(3) Whether the client is liable for expenses regardless of outcome;

(4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and

(5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) A contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) Reserved;

(2) The client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) The total fee is reasonable.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 4-24-93; Amended 8-20-99, eff. 10-19-99; Amended eff. 5-1-06

**NOTES:** MODEL RULE COMPARISON--2006 --Rule 1.5 (formerly Supreme Court Rule 155) is the same as ABA Model Rule 1.5 with two exceptions. First, unlike the Model Rule, paragraph (c) of the Nevada Rule is divided into subparagraphs. The provisions in subparagraphs (4) and (5) are specific to the Nevada Rule; there is no Model Rule counterpart to those provisions. Second, subparagraph (1) of paragraph (e) of the Model Rule has not been adopted. This subparagraph is reserved to maintain consistency with the Model Rules format. Compare Model Rules of Prof'l Conduct R. 1.5(e)(1) (2004) ("the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation").

#### CASE NOTES

EDITOR'S NOTE. --Some of the following cases were decided under former similar rules.

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TOC: Nevada Court Rules > NEVADA RULES OF PROFESSIONAL CONDUCT > CLIENT-LAWYER RELATIONSHIP > **Rule 1.15. Safekeeping Property**

*Nev. Rules of Prof'l Conduct 1.15*

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NEVADA RULES OF PROFESSIONAL CONDUCT  
CLIENT-LAWYER RELATIONSHIP

Nev. Rules of Prof'l Conduct 1.15 (2016)

Review court orders which may amend this Rule.

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold funds or other property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property in which clients or third persons hold an interest shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.



**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06

**NOTES:** MODEL RULE COMPARISON--2006 --Rule 1.15 (formerly Supreme Court Rule 165) is the same as ABA Model Rule 1.15 with modifications in paragraph (a) to specify that client trust accounts must be designated as such.

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TOC: Nevada Court Rules > NEVADA RULES OF PROFESSIONAL CONDUCT > CLIENT-LAWYER RELATIONSHIP > **Rule 1.15. Safekeeping Property**

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NEVADA RULES OF PROFESSIONAL CONDUCT  
ADVOCATE

## Nev. Rules of Prof'l Conduct 3.2 (2015)

Review court orders which may amend this Rule.

## Rule 3.2. Expediting Litigation

(a) A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(b) The duty stated in paragraph (a) does not preclude a lawyer from granting a reasonable request from opposing counsel for an accommodation, such as an extension of time, or from disagreeing with a client's wishes on administrative and tactical matters, such as scheduling depositions, the number of depositions to be taken, and the frequency and use of written discovery requests.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06**NOTES:** MODEL RULE COMPARISON--2006 --Rule 3.2 (formerly Supreme Court Rule 171) is the same as ABA Model Rule 3.2 with the exception of paragraph (b). Paragraph (b) is a Nevada-specific provision with no Model Rule counterpart.Service: **Get by LEXSTAT®**TOC: Nevada Revised Statutes Annotated, Constitution, Court Rules & ALS, Combined > NEVADA RULES OF PROFESSIONAL CONDUCT > ADVOCATE > **Rule 3.2. Expediting Litigation**Citation: **Nev. Rules of Prof'l Conduct 3.2**

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NEVADA RULES OF PROFESSIONAL CONDUCT  
ADVOCATE

## Nev. Rules of Prof'l Conduct 3.4 (2015)

Review court orders which may amend this Rule.

## Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client; and

(2) The lawyer reasonably believes that the person's interests will not be adversely affected

by refraining from giving such information.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06

**NOTES:** MODEL RULE COMPARISON--2006 --Rule 3.4 (formerly Supreme Court Rule 173) is the same as ABA Model Rule 3.4.

#### CASE NOTES

**EDITOR'S NOTE.** --Some of the cases in the following annotations were decided under former similar rules.

**AN ATTORNEY WHO ENGAGES IN PROHIBITED COMMUNICATIONS** violates the attorney's ethical duty to obey the obligations of the tribunal. Since the procedure for discovery is well established, an attorney may also be in violation of the rule prohibiting conduct prejudicial to the administration of justice. *Erickson v. Newmar Corp.*, 87 F.3d 298 (9th Cir. 1996).

**EXPERT WITNESS VIOLATIONS.** --An attorney violates an ethical duty when the attorney has ex parte contact with the opposing party's expert witness. *Erickson v. Newmar Corp.*, 87 F.3d 298 (9th Cir. 1996).

By his employment of the plaintiff's expert witness, the defendant's attorney entirely circumvented the discovery rules because the defendant's attorney had unsupervised access to the plaintiff's expert. *Erickson v. Newmar Corp.*, 87 F.3d 298 (9th Cir. 1996).

**EVIDENCE SUFFICIENT TO SUPPORT FINDING OF VIOLATION.** --Violation was supported by clear and convincing evidence given that the record demonstrated that the attorney deliberately included an award of costs to himself in an order he prepared when the district court had not awarded any costs, and he subsequently refused to stipulate to a modification of the order, forcing opposing counsel to file a motion to amend. *In re Schaefer*, 117 Nev. 496, 25 P.3d 191 (2001), modified on other grounds, rehearing denied, 31 P.3d 365 (Nev. 2001), cert. denied, 534 U.S. 1131, 122 S. Ct. 1072, 151 L. Ed. 2d 974 (2002).

**MISCONDUCT WAS HARMLESS.** --The interview with the witness took place after the trial. Therefore, the prosecutor's actions in instructing the witness not to talk to defense counsel did not frustrate defense counsel's efforts to prepare a defense, and any misconduct on the part of the prosecutor at the interview did not violate the defendant's right to due process. *Lisle v. State*, 113 Nev. 540, 937 P.2d 473 (1997).

**PROSECUTOR'S WILLFUL FAILURE TO COMPLY WITH DISCOVERY OBLIGATIONS** and district court orders pertaining thereto may constitute professional misconduct. *Schlafer v. State*, 115 Nev. 167, 979 P.2d 712 (1999).

**ATTORNEY'S PERSONAL OPINION NOT ALLOWED.** --Attorney's comments to the jury reflected his personal opinion about the justness of personal injury litigants' causes and the defendants' culpability; by representing to the jury his personal opinion that the plaintiffs' cases were worthless, the attorney not only violated his ethical duties, he also prejudiced the jury against the plaintiffs. *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008).

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**Rule 8.1. Bar Admission and Disciplinary Matters**Citation: **Nev. Rules of Prof'l Conduct 8.1***Nev. Rules of Prof'l Conduct 8.1*

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NEVADA RULES OF PROFESSIONAL CONDUCT  
MAINTAINING THE INTEGRITY OF THE PROFESSION

Nev. Rules of Prof'l Conduct 8.1 (2015)

Review court orders which may amend this Rule.

Rule 8.1. Bar Admission and Disciplinary Matters

*Bar Admission and Disciplinary Matters.* An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact, or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06**NOTES:** MODEL RULE COMPARISON--2006 -- Rule 8.1 (formerly Supreme Court Rule 200) is the same as ABA Model Rule 8.1.Service: **Get by LEXSTAT®**

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**Rule 8.1. Bar Admission and Disciplinary Matters**Citation: **Nev. Rules of Prof'l Conduct 8.1**

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**Rule 8.4. Misconduct**Citation: **Nev. Rules of Prof'l Conduct 8.4***Nev. Rules of Prof'l Conduct 8.4*

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NEVADA RULES OF PROFESSIONAL CONDUCT  
MAINTAINING THE INTEGRITY OF THE PROFESSION

## Nev. Rules of Prof'l Conduct 8.4 (2016)

Review court orders which may amend this Rule.

## Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

**HISTORY:** Added 1-27-86, eff. 3-28-86; Amended eff. 5-1-06**NOTES:** MODEL RULE COMPARISON--2006 --Rule 8.4 (formerly Supreme Court Rule 203) is the same as ABA Model Rule 8.4.Service: **Get by LEXSTAT®**

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**Rule 8.4. Misconduct**

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# DECLARATION OF SERVICE

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CASE NUMBER(s): **16-J-10756**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

## NOTICE OF DISCIPLINARY CHARGES

☐

**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☒

**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

☐

**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service (UPS).

☐

**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐

**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐

*(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒

*(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: **9414 7266 9904 2010 0779 85** at Los Angeles, addressed to: *(see below)*

☐

*(for Ground Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: \_\_\_\_\_ addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
SCOTT MICHAEL CANTOR	Scott Michael Cantor, Ltd. 410 S Rampart Blvd Ste 390 Las Vegas, NV 89145		
		Electronic Address	

- ☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: December 5, 2016

SIGNED:

*Laura Jett*  
LAURA JETT  
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST **August 4, 2021**

State Bar Court, State Bar of California,  
Los Angeles

By \_\_\_\_\_  
Clerk

**EXHIBIT 4**

**EXHIBIT 4**

OCT 10 2019

(State Bar Court No. SBC-19-O-30065)

Jorge Navarrete Clerk

S257331

Deputy

## IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re SCOTT MICHAEL CANTOR on Discipline

The court orders that Scott Michael Cantor (Respondent), State Bar Number 79851, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and Respondent is placed on probation for two years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first one year of probation;
2. Respondent must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on July 3, 2019; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must also comply with California Rules of Court, rule 9.20, 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 this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

day of OCT 10 2019 20

By:

Deputy

CANTIL-SAKAUYE

Chief Justice

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
<b>Counsel for the State Bar</b>  <b>Joseph A. Silvos III</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1247</b>  <b>State Bar # 248502</b>	<b>Case Number(s):</b> <b>SBC-19-O-30065</b>	<b>For Court use only</b>   <div style="text-align: center;"> <b>FILED</b>  <i>psf</i>  <b>JUL - 3 2019</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>	
<b>Counsel For Respondent</b>  <b>David S. Kestenbaum</b> <b>14401 Sylvan Street, Suite 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>State Bar # 85228</b>	<b>Submitted to: Settlement Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
<b>In the Matter of:</b> <b>SCOTT M. CANTOR</b>  <b>State Bar # 79851</b>  <b>(Respondent)</b>			

**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 an attorney 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 are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (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. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
- ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's annual fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline:**
- (a) ☒ State Bar Court case # of prior case: **State Bar Court case no. 16-J-10756-CV. See Exhibit 1, 20 pages.**
- (b) ☒ Date prior discipline effective: **October 5, 2017**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Respondent was found culpable of former Rules of Professional Conduct and State Bar Act violations based on another jurisdiction's record of discipline pursuant to Business and Professions Code section 6049.1 (See pages 12-13 and Exhibit 1, p. 7-14)**
- (d) ☒ Degree of prior discipline: **60 days of actual suspension, one year stayed suspension, and one year probation.**
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 13.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 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 likely to recur.
- (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 Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's 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 Respondent.

- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, 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 resulting from circumstances which were not reasonably foreseeable or were beyond Respondent's control and were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's 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 Respondent's 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:**

Pre-Trial Stipulation, see page 13.

#### **D. Recommended Discipline:**

- (1) ☒ **Actual Suspension:**

Respondent is suspended from the practice of law for **two years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **one year** of the period of Respondent's probation.

- (2) ☐ **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3) ☐ **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.



- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5) ☐ **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

(Do not write above this line.)

- a. Respondent makes restitution to \_\_\_\_\_ or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6) ☐ **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7) ☐ **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126. Respondent must provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official State Bar Record Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
  - a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
  - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

**c. Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7) ☐ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8) ☒ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because **respondent agreed to attend State Bar Ethics School or participate in six hours of Minimum Continuing Legal Education (MCLE) Courses in lieu of State Bar Ethics School (because he resides outside of California) as part of his prior disciplinary proceeding (Exhibit 1). See In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact

must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_.
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15) ☐ **The following conditions are attached hereto and incorporated:**
- ☐ Financial Conditions ☐ Medical Conditions
- ☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1) ☐ **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☒ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because respondent agreed to attend, take, and pass the Multistate Professional

**Responsibility Examination as part of his prior disciplinary proceeding (Exhibit 1). In the Matter of Seltzer (Review Dept. 2013) 5. Cal. State Bar Ct. Rptr. 263, 272 fn. 7 .**

- (3) ☒ **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (4) ☐ **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension. In addition, Respondent must also comply with the probation condition at paragraph E.(14) entitled Proof of Compliance with Rule 9.20 Obligations.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (5) ☐ **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because

- (6) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT M. CANTOR

CASE NUMBER:                          SBC-19-30065

**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. 18-O-17275 (State Bar Investigation)**

**FACTS:**

1. On May 2, 2017, the State Bar Court Hearing Department filed and served upon respondent a Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension; in State Bar Court Case No. 16-J-10756 (Order Approving Stipulation).

2. On September 5, 2017, the California Supreme Court filed and transmitted Order No. S242702 (Order) which suspended respondent from the practice of law for a period of one year (the Court stayed the execution of that suspension), suspended respondent for 60 days of actual suspension, placed him on probation for a period of one year. The Order also subjected respondent to the conditions of probation as recommended by the Hearing Department in its Order Approving Stipulation. Respondent's probation became effective on October 5, 2017.

3. The Supreme Court and the Hearing Department ordered respondent to comply with certain conditions of probation, but he failed to do so as set forth below.

4. The Supreme Court required respondent, within 30 days from the effective date of discipline (on or before November 4, 2017), to contact the Office of Probation (Probation) and schedule a meeting with his assigned Probation deputy to discuss the terms and conditions of probation. The Order also required respondent to meet with Probation upon the direction of the Probation deputy in-person or by telephone.

5. On September 27, 2017, Probation emailed respondent informing him that they uploaded, to his State Bar Profile, a copy of his probation letter. The letter outlined the terms and conditions of respondent's probation.

6. Respondent failed to contact Probation on or before November 4, 2017.

7. On November 6, 2017, Probation sent a letter to respondent informing him that he failed to schedule the required meeting.

8. On November 9, 2017, respondent called Probation to schedule the meeting.

9. Probation provided respondent with a meeting date of November 13, 2017, and instructed respondent to call a specified number at 1:00 pm.

10. Respondent failed to call Probation on November 13, 2017, at 1:00 pm.

11. The next day respondent contacted Probation, stated he missed the meeting because the computers at his office crashed, and rescheduled the meeting to November 16, 2017 at 4:00 pm. The meeting took place on November 16, 2017 at 4:00 pm.

12. The Hearing Department ordered respondent to comply with the State Bar Act and Rules of Professional Conduct and to report such compliance in writing under penalty of perjury to Probation on January 10, 2018, April 10, 2018, and July 10, 2018, (quarterly reports) and file a final report on or before October 5, 2018.

13. Respondent failed to file quarterly reports for April 10, 2018, and July 10, 2018 and failed to provide a final report on or before October 5, 2018.

#### CONCLUSION OF LAW:

14. Respondent's multiple violations of the terms and conditions of his probation constitute an intentional violation of Business and Professions Code section 6068(k).

#### AGGRAVATING CIRCUMSTANCES.

##### **Prior Record of Discipline:**

Respondent's most recent record of discipline was in State Bar Case No. 16-J-10756 (Supreme Court Case No. S242702). The pending case, and subject of this stipulation, resulted from probation violations for that matter.

Respondent's prior record of discipline stemmed from a Nevada matter involving three consolidated cases (Nevada State Bar Case numbers SG10-0429 (the Safi Matter), SG11-1139 (the Bermudez Matter), and SG11-1330 (the Alfano Matter)). The Nevada case concluded in respondent entering into a conditional plea to facts and admissions to violations of Nevada Rules of Professional Conduct 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1, and 8.4. Respondent's misconduct in Nevada was the California equivalent of:

- Former Rules of Professional Conduct, rule 3-110(A) [failure to perform].
- Former Rules of Professional Conduct, rule 4-200(A) [receipt of illegal fees].
- Business and Professions Code section 6068(a) [failure to uphold laws].
- Business and Professions Code section 6068(m) [failure to inform client of significant developments].
- Business and Professions Code section 6103 [disobedience of a court order].

In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds.

In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint



Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition.

In the Alfano Matter, respondent acted as the administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code. Respondent then received illegal fees for his work as an administrator. Respondent also failed to perform legal services by failing to file a First and Final Accounting.

As aggravation in the prior California case, respondent stipulated to a prior record of discipline (discussed below), multiple acts of wrongdoing, and failure to make restitution.

The State Bar considered respondent's stipulation as mitigation.

Respondent's recent California disciplinary proceeding resulted in one year stayed suspension, one year probation, and 60 days actual suspension.

Exhibit 1 is a true and correct copy of the prior discipline and the parties have stipulated to the authenticity of the documents.

Respondent's first record of discipline resulted in a private reprimand from the State Bar of Nevada in Grievance File #89-138-406 on January 25, 1990. Respondent temporarily misplaced two casino chips entrusted to him by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safe keep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the former California Rules of Professional Conduct. Respondent received no discipline in California for the Nevada private reprimand.

Due to the remoteness in time (the violation occurred in 1983), level of discipline respondent received from the State Bar of Nevada (private reprimand), and the fact that the California State Bar did not move forward with disciplinary proceedings in the 1990 matter, respondent's 1990 Nevada disciplinary proceeding provides minimal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent failed to timely schedule his meeting with Probation and he failed to attend the first scheduled meeting with Probation. He failed to file his April 10, 2018, and July 10, 2018, quarterly reports and his final report on or before October 5, 2018. Multiple acts of misconduct can be considered serious aggravation. (See, e.g., *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [when attorney commits multiple violations of same condition, gravity of each successive violation increases].)

## **MITIGATING CIRCUMSTANCES.**

**Pretrial stipulation:** By entering into a pretrial stipulation, thereby saving the State Bar and the State Bar Court time and resources, respondent is entitled to mitigation. (See *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].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.14 provides, “[a]ctual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the lawyer’s unwillingness or inability to comply with disciplinary orders.”

Here, respondent outright and repeatedly failed to comply with a number of conditions of his probation. He untimely scheduled his meeting with Probation and missed his initial meeting with Probation following the effective date of his discipline. He failed to submit two quarterly reports and failed to provide his final report.

Furthermore, Standard 1.8(a) requires that, “[i]f a lawyer has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.” The burden is on respondent to show that the misconduct is minor and remote in time. (See *In re Silvertown*, *supra*, 36 Cal. 4th at p. 92.) Respondent’s repeated misconduct is not remote because the violations of his probation terms occurred soon after the effective date of his probation and continued to occur. Moreover, respondent’s conduct is not minor because the repeat violations tend to show his indifference to the discipline to which he agreed.

In determining the appropriate level of discipline under the standards, we look to the decisional law for guidance. (*In re Morse* (1995) 11 Cal.4th 184, 207.) Two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate. Case law supports this result.

In *Conroy v. State Bar* (1990), 51 Cal.3d 799, Conroy received a private reproof based upon three unrelated incidents of misconduct. As a condition of probation, the Review Department ordered Conroy to take and pass the Professional Responsibility Examination (PRE) within one year of the reproof's effective date. Conroy passed the examination three months late. As a result, the State Bar initiated disciplinary proceedings against him for noncompliance with the prior disciplinary conditions. After Conroy defaulted to the charges brought against him, the State Bar Court recommended a one year suspension, stayed, including a 60 day actual suspension. The Supreme Court agreed with the level of discipline. The Court deemed as mitigating the attorney's passage of the examination at the first opportunity possible after the deadline. Nonetheless, in determining Conroy's discipline, the Court noted aggravating circumstances including Conroy's failure to appreciate the seriousness of the misconduct, prior record of discipline, and absence of remorse.

In *the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, the State Bar moved to revoke Tiernan's probation for failure to cooperate with his probation monitor and file timely quarterly reports. Tiernan had four prior records of discipline. The probation Tiernan violated stemmed from a lack of communication with clients and resulted in 60 days of actual suspension. While Tiernan ultimately completed the terms of his probation, the court found further aggravation for multiple acts of misconduct for his failures to timely comply with probation. The Review Department imposed 11 months of actual suspension.

In each of the forgoing cases the Courts increased the respondents' level of discipline from the underlying matter. In the present case, respondent's misconduct was worse than Conroy and Tiernan's. They all completed their probation requirements, albeit late. Respondent failed to file two of his quarterly reports and his final report. And while he participated in his meeting with Probation, he did so late and after he failed to attend the first scheduled meeting.

Respondent's recent record of discipline resulted in one year stayed suspension, one year probation, and 60 days actual suspension, coupled with his failure to take action in his probation, significant discipline pursuant to Standard 1.8(a) is required. Respondent, through his own inaction, demonstrated a failure to grasp the importance of strict compliance with his probation conditions.

On balance, and in light of the aggravating circumstances, and lack of mitigating circumstances (save entering into this stipulation), two years of stayed suspension and two years of probation with conditions including one year of actual suspension is appropriate to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**


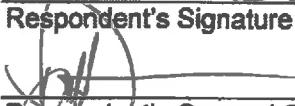
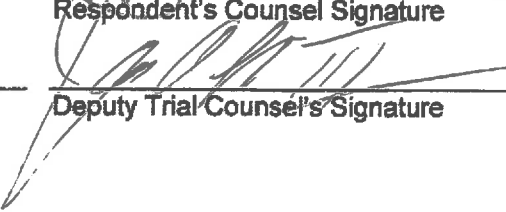
Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 28, 2019, the discipline costs in this matter are \$3985. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: <b>SCOTT M. CANTOR</b>	Case Number(s): <b>SBC-19-O-30065</b>
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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.

<u>6.6.19</u> Date	 Respondent's Signature	<u>Scott M. Cantor</u> Print Name
<u>6-10-19</u> Date	 Respondent's Counsel Signature	<u>David S. Kestenbaum</u> Print Name
<u>6/10/19</u> Date	 Deputy Trial Counsel's Signature	<u>Joseph A. Silvos, III</u> Print Name

(Do not write above this line.)

In the Matter of:  
SCOTT M. CANTOR

Case Number(s):  
SBC-19-O-30065

### 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.

1. On page 9 of the Stipulation, an "X" is inserted in the box at paragraph E.(14) recommending compliance with the probation condition "Proof of Compliance with Rule 9.20 Obligations."
2. On page 11 of the Stipulation, at the top of the page, "SBC-19-30065" is deleted, and in its place is inserted "SBC-19-O-30065".
3. On page 11 of the Stipulation, at numbered paragraph 3, "The Supreme Court and the Hearing Department ordered" is deleted, and in its place is inserted "The Hearing Department recommended, and the Supreme Court ordered".

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 Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date

July 2, 2019

Rebecca Meyer Rosenberg

REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
Judge of the State Bar Court

ORIGINAL

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b> <b>PUBLIC MATTER</b>		
<b>Counsel For The State Bar</b>  <b>Jamie Kim</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1182</b>  <b>Bar # 281574</b>	<b>Case Number(s):</b> <b>16-J-10756-CV</b>	<b>For Court use only</b>  <b>FILED</b> <b>P.B.</b> <b>MAY 02 2017</b> <b>STATE BAR COURT</b> <b>CLERK'S OFFICE</b> <b>LOS ANGELES</b>
<b>Counsel For Respondent</b>  <b>David Kestenbaum</b> <b>Kestenbaum Law Group, APC</b> <b>14401 Sylvan St., Ste. 100</b> <b>Van Nuys, CA 91401</b> <b>(818) 616-4312</b>  <b>Bar # 85228</b>	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND</b> <b>DISPOSITION AND ORDER APPROVING</b>	
<b>In the Matter of:</b> <b>SCOTT MICHAEL CANTOR</b>  <b>Bar # 79851</b>  <b>A Member of the State Bar of California</b> <b>(Respondent)</b>	<b>ACTUAL SUSPENSION</b>  <input checked="" type="checkbox"/> <b>PREVIOUS STIPULATION REJECTED</b>	

**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 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.
- (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: **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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 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) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

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- (7) ☐ **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.
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See attachment, page 14.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☒ **Restitution:** Respondent failed to make restitution. See attachment, page 14.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

Prior record of discipline, see attachment, page 14.

**C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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



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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:**

**Pretrial Stipulation, see attachment, page 14.**

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 resides out of state. A comparable alternative to Ethics School is provided in Section F, sub-section 5 below.**

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- (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 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: \_\_\_\_\_
- (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:** As a further condition of the probation, because respondent resides out of state respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) complete six (6) hours of live in-person or live online-webinar of Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in the State of Nevada or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      SCOTT MICHAEL CANTOR

CASE NUMBER:                            16-J-10756-CV

**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. 16-J-10756-CV (Discipline in Other Jurisdiction)**

**PROCEDURAL BACKGROUND IN OTHER JURISDICTION:**

1. Respondent was admitted to the State Bar of Nevada ("SBN") on September 25, 1978, Bar No. 1713.
2. On February 24, 2014, the SBN filed a complaint against respondent in case numbers SG10-0249, SG11-1139 and SG11-1330 before the Southern Nevada Disciplinary Board of the State Bar of Nevada ("Nevada Disciplinary Board").
3. On April 17, 2014, respondent filed a Verified Answer to Complaint in case numbers SG10-0249, SG11-1139 and SG11-1330.
4. On March 19, 2015, respondent entered into a Conditional Guilty Plea in Exchange for a State Form of Discipline ("Conditional Guilty Plea"), which included a stipulation of facts and admission of violations of rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 3.2, 3.4, 8.1 and 8.4 of the Nevada Rules of Professional Conduct.
5. On April 14, 2015, a Formal Hearing Panel of the Nevada Disciplinary Board heard respondent's case and the Conditional Guilty Plea. The Hearing Panel, by unanimous vote, accepted the Conditional Guilty Plea, found that respondent had violated the Rules of Professional Conduct and filed a Findings of Fact, Conclusions of Law and Recommendation, which recommended that respondent receive a six month and one day suspension, stayed, with a one-year probation.
6. On September 29, 2015, the Supreme Court of the State of Nevada entered an Order Approving Conditional Guilty Plea Agreement, imposing a six month and one day suspension, stayed, with a one-year probation.
7. On October 8, 2015, the Order Approving Conditional Guilty Plea Agreement was served by the State Bar of Nevada via electronic mail to the courts in Nevada and the discipline became final.
8. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

*SG10-0429, Matter re Bijan Safi*

9. On February 3, 2005, Bijan Safi of BJN, Inc. advanced Raymond Delillo, Sr. \$2,000 at the rate of 15% per month as a pre-settlement loan. Delillo was represented by respondent in a personal injury matter.

10. On October 27, 2007, Delillo passed away prior to the conclusion of his personal injury matter.

11. On April 4, 2008, Delillo's daughter, Patricia Mertz, was appointed Special Administrator of Delillo's estate.

12. In June 2008, Delillo's personal injury matter settled for \$26,500, at which time Safi claimed that Delillo owed BJN \$26,500.

13. In June 2008, Traveler's Insurance, an insurance carrier, issued a settlement check in the amount of \$26,500 to Graziadei & Cantor, Mertz and BJN. However, the check was sent to the wrong address. When the check was received by respondent in August 2008, it was stale-dated.

14. In October 2008, respondent wrote to Safi and informed him of the settlement and Delillo's passing. He also stated that the amount BJN had claimed as of October 2008 exceeded the amount of the settlement, including attorney fees. Respondent incorrectly stated that the loan amount was \$750, not \$2,000.

15. On December 3, 2008, respondent wrote to Safi requesting a reduction in light of the fact that Delillo's wife was suffering from dementia and money was needed for her nursing home facility.

16. Sometime thereafter, but before April 1, 2009, Safi rejected a number of compromises that had been relayed by respondent.

17. On April 1, 2009 respondent informed Safi that respondent would have to interplead the funds.

18. On August 13, 2009, Traveler's Insurance reissued Delillo's settlement check, payable to Graziadei & Cantor, Mertz and BJN. This check was again misdirected by the insurer.

19. On August 11, 2010, the SBN received a grievance from BJN against respondent.

20. On September 10, 2010, respondent submitted an initial response to the SBN in which he acknowledged that he had not filed an interpleader. Respondent represented that he would file an interpleader by October 7, 2010 and would provide the SBN a file-stamped copy. Respondent failed to do so.

21. On March 16, 2011, the SBN wrote to respondent, requesting copies of the interpleader, settlement documents, checks and trust account information.

22. On April 1, 2011, respondent wrote to the SBN stating that no interpleader had been filed as his law firm had since dissolved. He added that the check became stale-dated because all the signatures could not be obtained, and that he was in the process of requesting another check.

23. On May 2, 2011, the SBN wrote to respondent requesting an update as to the status of the filing of the interpleader and obtaining a new check. Respondent responded by indicating that the interpleader would be filed in a few days time and that he was requesting a new check.

24. On May 23, 2011, the SBN sent a follow up letter to respondent requesting a response. At the time, court records revealed that an interpleader had not been filed. Respondent failed to respond.

25. On June 28, 2011, the SBN sent a second follow up letter to respondent via certified mail.

26. On July 1, 2011, respondent submitted a response in which he stated that he was waiting for Traveler's Insurance to call him back regarding the issuance of a new check. Respondent had in fact sent a letter to the law firm, Traveler's attorney, had previously worked. He had not directly called Traveler's attorney. Respondent also submitted to the SBN a file-stamped copy of the interpleader, dated June 3, 2011 in the case titled *Graziadei & Cantor, Ltd., v. Patricia Mertz, et al.*, case no. A642626 in the Eighth Judicial District Court of Nevada.

27. On August 10, 2011, the SBN contacted Traveler's attorney, who represented that respondent had never communicated with him.

28. On August 10, 2011, the SBN wrote to respondent providing him with the contact information for Traveler's attorney and advising him that he had ninety days to ensure that the interpleader was proceeding, or else the SBN would seek a formal hearing on the matter. .

29. On October 10, 2011, respondent wrote to the SBN requesting an extension until October 14, 2011 to respond. Respondent did not respond by October 14, 2011, or at any date thereafter.

30. On January 12, 2012, respondent included the SBN in a copy of a letter that he sent to Safi's attorney, in which respondent stated that he had been unsuccessful in serving BJN and had filed a Motion for Extension of Time to Serve Process. Respondent added that he was in the process of serving the client by publication. Respondent stated that he had also been unsuccessful in obtaining a replacement check for the stale-dated check. Around the time of this letter, BJN had filed a Motion for Disbursement of Interpleader Funds on the grounds that it had taken three years for respondent to file the interpleader action and that a year had passed since the initial filing. Respondent did not file an Opposition to this motion.

31. On September 5, 2012, an order was entered granting the Motion for Disbursement of Interpleader Funds and ordering respondent to distribute \$26,500 to BJN.

32. On September 20, 2012, the Notice of Entry of Order for BJN's Motion for Disbursement of Interpleader Funds was entered.

33. On November 14, 2012, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor, Ltd., and/or Scott M. Cantor, Esq. Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order on Order Shortening Time based on his failure to comply with the September 5, 2012 order. A hearing was scheduled for November 27, 2012.

34. On November 25, 2012, respondent filed a Motion to Set Aside Order Granting Disbursement of Interpleader Funds stating that (1) BJN's attorney prematurely filed the Motion to Disburse Funds when Mertz had not filed an Answer to the lawsuit, and (2) respondent was not properly served with the motion, as all the dates/times were blank.

35. On January 8, 2013, a Stipulation and Order was entered, wherein it was agreed that the \$26,500 settlement would be distributed as follows: \$8,833.33 would be paid to the Delillio Estate, \$8,833.33 would be paid to respondent and \$8,833.33 would be paid to Safi. Traveler's was also ordered to reissue the check in the amount of \$26,500 to respondent, to be held in trust pending approval of the probate court.

36. On March 19, 2013, BJN filed an Application for Order to Show Cause Why Graziadei & Cantor and/or Cantor Should Not Be Held in Contempt, Sanctions Issued, and Order Directing Compliance With Prior Court Order, in which BJN claimed that respondent had not relayed a time frame as to when they could anticipate receipt of the monies ordered on January 8, 2013.

37. On March 27, 2013, respondent filed an Affidavit in opposition to the March 19, 2013 Application for Order to Show Cause, in which respondent stated that he had not received the re-issue of Traveler's stale-dated check. Respondent added that on March 14, 2013, he had called Traveler's and learned that the check had been inadvertently mailed to the wrong address. On March 19, 2013, respondent received a settlement check from Traveler's. Respondent stated that he would apply for ratification and approval of distribution of settlement proceeds.

38. On April 9, 2013, the court denied the Motion for Sanctions but granted the Motion Seeking Compliance with the order. The matter was set for status check on May 7, 2013 regarding distribution of funds. It was noted that if monies had been distributed, then no appearances would be necessary. The court ordered respondent to give the settlement check to Morris.

39. On April 12, 2013, respondent informed BJN's attorney that Mertz would first have to apply to probate court for ratification and approval for the distribution of the settlement proceeds. Respondent also stated that the funds should not be disbursed without probate approval.

40. At a hearing held on May 7, 2013, BJN's attorney informed the court that he was in possession of the settlement check and that the check had been endorsed, but rejected by the bank as his firm was not named on the check. BJN's attorney advised the court that Delillo's estate had an open probate and that respondent had advised him not to disburse the settlement funds without the probate court's permission. The court ordered that sanctions in the amount of \$1,000 per day would begin if the funds were not distributed by May 10, 2013. Respondent was not present at the hearing.

41. On May 7, 2013, the \$26,500 settlement check was deposited into respondent's Nevada State Bank trust account no. xxxx-xxxx-2914 ("CTA").

42. On May 9, 2013, BJN received a cashier's check from respondent in the amount of \$8,333.33. The check was issued from respondent's CTA. The probate court had not yet adjudicated the matter.

43. On May 24, 2013, a Petition for Ratification and Approval of Distribution of Settlement Proceeds was filed in the case titled *In the Matter of the Estate of Raymond Delillo, Sr.*, case no. P061754.

44. On June 21, 2013, the court held a hearing and approved distribution.

45. On August 1, 2013, Mertz informed the SBN that she had not received Delillo's portion of the settlement proceeds. She also was not aware of the fact that respondent had distributed estate funds on May 9, 2013 without approval from the probate court.

46. On August 6, 2013, respondent issued checks to Mertz, the other heirs and a lienholder, totaling \$8,798.75.

*SB11-1139, Matter of Marhayra Bermudez*

47. In April 2009, Marhayra Bermudez retained the firm Graziadei & Cantor to represent her in a joint petition for divorce. Respondent was the primary attorney responsible for the matter. Respondent's fee was \$750, not including costs. Bermudez agreed to pay respondent's fee in payments as she was unable to pay his fee at all once.

48. By May 28, 2009, Bermudez had paid respondent \$440 in attorney fees.

49. By May 2009, Bermudez provided respondent with all necessary documentation, including documentation regarding a mandatory seminar for separating parents ("COPE"). Respondent did not file Bermudez's COPE certificates until January 27, 2011.

50. By July 16, 2009, Bermudez had not been contacted by respondent. At this time, Bermudez called respondent's office to ask if documents were ready for her to sign. She was told by a paralegal to come to respondent's office to sign documents. Bermudez was thereafter led to believe that her paperwork was filed.

51. Thereafter, Bermudez called respondent's office every month to request a status update on her case. During that time, Bermudez visited respondent's office and met with respondent, at which time she reviewed the documentation in her case, which had not been filed. Bermudez noted to respondent that real property was omitted from a document, which respondent corrected. Bermudez signed the corrected documentation.

52. Between July 17, 2009 and January 2010, Bermudez contacted respondent's office by telephone on a monthly basis in order to determine whether respondent had filed her marital dissolution documents and whether a divorce decree was entered in her case. Respondent's office initially advised Bermudez that they had not heard from the court, but at no time did respondent inform Bermudez that her marital dissolution papers had been filed and that a divorce decree had been entered.

53. By January 2010, Bermudez paid respondent a total of \$1,030 in attorney fees.

54. On January 27, 2011, respondent filed the Resident Witness Affidavit, which attested that the parties had resided in Nevada for the prior six weeks, and the Request for Summary Disposition. The Resident Witness Affidavit had been signed on September 2009 and the Request for Summary Disposition had been signed by respondent on April 26, 2010.

55. In March 2011, Bermudez was asked to come to respondent's office to re-sign documents because "the court kicked the paperwork because it was two years old." The law clerk had also informed respondent that there were other problems with the marital dissolution documents, which included the calculation of child support and how the living arrangements might affect visitation.

56. In April 2011, Bermudez called respondent's office and was informed that "the courts had kicked back the package again because there were some mistakes in the divorce decree." The Joint Petition that had been filed with the Court had been signed by Bermudez's husband on August 17, 2009, and by Bermudez on October 2, 2009. The Joint Petition was filed over a year later on November 9, 2010. The Joint Petition had provided that the issue of overnight visitation would be reevaluated in eight months, the time for which had lapsed by the time the Joint Petition was filed.



57. On January 31, 2011, the District Court issued a memo to respondent, informing him that the filed documents were too old to be processed as conditions may have changed since the parties signed the Joint Petition and that the living arrangement issue was of concern. It also indicated that the 2009 Affidavit of Residency was inadequate to establish residency as the Joint Petition was filed in 2011. The memo also noted that the Joint Petition contained mathematical errors in regard to child-support calculations, as it stated that income was \$541.67 monthly, but \$62.50 weekly, and directed respondent to reevaluate the child support calculations.

58. On April 21, 2011, the District Court returned the Decree of Divorce that respondent had submitted, for failure to make the changes indicated in the court's January 31, 2011 memo.

59. On August 23, 2011, respondent informed Bermudez that he was going to personally go to the court to find out what happened and instructed her to call him back at 4:00 p.m. the following day. Bermudez informed respondent that she would hire a new attorney as it had taken two years for him to file a joint petition for a divorce and a decree had not been issued.

60. On August 24, 2011, Bermudez called respondent, but was unable to speak to with him or his assistant. She was advised that respondent would not be back in the office until August 29, 2011.

61. On November 17, 2011, the District Court entered a Notice of Entry of Order of Dismissal without Prejudice, pursuant to rule 5.90 of the Eighth Judicial District Court Rules ("EDCR") and on the basis that the matter had been pending for over a year without any action having been taken for over six months.

62. On February 1, 2012, Bermudez filed a joint petition for divorce, in pro per.

63. Respondent failed to provide a response to the SBN investigation regarding respondent's representation of Bermudez, despite two written requests made on September 30, 2011 and December 9, 2011. Respondent acknowledged receipt of the September 30, 2011 request on October 30, 2011, when he faxed a letter to the SBN requesting an extension of 15 days to respond, which was granted by the SBN.

64. On June 6, 2012, respondent faxed to the SBN a copy of an agreement he had submitted to the SBN Fee Dispute Department, which he had believed constituted a response to the SBN investigation.

*SG11-1330, Matter of Frank and Robert Alfano*

65. Sometime before July 10, 2009, the firm of Cantor & Graziadei was hired to handle the probate of the estate of Bertha Alfano, who had passed away on July 11, 2008. Her heirs were Frank and Robert Alfano. Graziadei was the attorney for the estate and respondent acted as the Administrator for the estate.

66. On July 10, 2009, Bertha Alfano's will was admitted to probate in the Eighth Judicial District Court.

67. On April 14, 2010, respondent filed an inventory in Bertha Alfano's probate case, which identified nine savings bonds, totaling \$18,000, and an additional \$88,377.47 in a bank account with Nevada State Bank.

68. On July 9, 2010, a Notice to Creditors was filed, and the corresponding Affidavit of Publication was filed on July 26, 2010.

69. From December 2009 to December 2010, Frank and Robert Alfano spoke with Graziadei on the phone, in an effort to settle the estate.

70. In December 2010, at the direction of Graziadei, four checks, totaling \$3,000, were issued from Bertha Alfano's estate, made payable to respondent as administrator for the estate and with the notation that the check was for the administrator's fee. These checks were issued without prior approval from the probate court and signed by respondent. Respondent did not make restitution for the \$3,000 administrator fee.

71. On January 5, 2011, Robert Alfano sent respondent a letter requesting that respondent hasten the processing of Bertha Alfano's estate.

72. On January 10, 2011, respondent sent a letter to the Alfanos wherein he indicated that he would be filing a First and Final Accounting and Petition for Distribution. Respondent failed to file the First and Final Accounting.

73. On July 1, 2011, Frank and Robert Alfano retained attorney Alice Jacobs Carles, an attorney in New Jersey where they reside, to assist them with the probate of Bertha Alfano's estate.

74. On July 1, 2011, Carles wrote a letter to respondent requesting information as to when respondent would file the First and Final Accounting.

75. On July 12, 2011, respondent responded to Carles and stated that he would file the First and Final Accounting within ten calendar days. Respondent failed to do so.

76. By April 2012, respondent and Graziadei had dissolved their firm, after which respondent had stopped receiving mail from the Nevada State Bank. Respondent also misplaced the savings bonds, as well as other personal items belonging to Bertha Alfano's estate, leaving them in his former firm's office. At that time, records from the US Treasury showed that the savings bonds had not been cashed out.

77. On August 23, 2013, Shirley Derke, who had been hired to represent Frank and Robert Alfano, filed a Petition for Revocation of Letters of Administration and Appointment of Replacement Co-Personal Representative, which requested that the court revoke respondent's letters of administration and appoint Derke in his place, pursuant to respondent's failure to file an accounting.

78. On September 13, 2013, at a hearing before the probate commissioner, respondent agreed to resign as Administrator and to provide an accounting to the court by October 31, 2013.

79. On November 25, 2013, respondent filed a First Accounting.

80. On January 14, 2014, the court issued an order approving the petition, revoking respondent's Letters of Administration, and appointing Derke as the administrator of the estate.

#### CONCLUSIONS OF LAW:

81. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Nevada warrants the imposition of discipline under the laws and rules binding upon

respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### **AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** On January 25, 1990, the State Bar of Nevada issued respondent a private reprimand in Grievance File #89-138-406. Respondent temporarily misplaced two casino chips that had been entrusted to respondent by a client in 1983. The letter of reprimand stated that respondent had violated Nevada Supreme Court Rule 165 (failure to safekeep property of a client). Under California Business and Professions Code section 6049.1, respondent's misconduct in Nevada would constitute disciplinable misconduct in California under rule 4-100(B)(2) of the California Rules of Professional Conduct. This prior record of discipline precedes the instant misconduct. (*See In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [necessary to examine the nature and chronology of an attorney's record of discipline and the impact thereof on a present disciplinary matter to properly fulfill the purposes of lawyer discipline].)

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent engaged in multiple acts of misconduct in the underlying matter consisting of disobedience of a court order, failure to cooperate in a disciplinary investigation, failure to render legal services competently, failure to communicate significant developments to a client and collecting an illegal fee.

**Failure to Make Restitution (Std. 1.5(m)):** Respondent failed to make restitution to the Estate of Bertha Alfano for taking an illegal fee.

#### **MITIGATING CIRCUMSTANCES.**

**Pretrial Stipulation:** By entering into this stipulation prior to the trial in this matter, respondent has acknowledged his misconduct and is entitled to mitigation for saving State Bar time and resources. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (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.) If a recommendation is at the high end or low

end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Respondent engaged in misconduct in Nevada, in which the California equivalent violations include violations of rules 3-110(A) [failure to perform] and 4-200(A) [receipt of illegal fees], and Business and Professions Code sections 6068(a) [failure to uphold laws], 6068(m) [failure to inform client of significant developments] and 6103 [disobedience of a court order]. In the Safi Matter, respondent failed to obey a court order requiring prompt disbursement of settlement funds. In the Bermudez Matter, respondent failed to render legal services for his client by failing to file the client's parenting certificates in her marital dissolution matter and by waiting a year to file a Joint Petition. Respondent also failed to inform the client of significant developments, including the District Court's reasons for returning a Decree of Divorce and rejecting the Joint Petition. In the Alfano Matter, respondent acted as the Administrator for an estate, without approval from the probate court, which was a violation of the Nevada Probate Code, the equivalent California violation of which is Business and Professions Code section 6068(a). Respondent then received illegal fees for his work as an Administrator. Respondent then failed to perform legal services by failing to file a First and Final Accounting.

Standard 2.3(b) applies to respondent's illegal fee in the probate matter of Bertha Alfano's estate, and calls for a suspension or reproof. Standard 2.7(b) applies to respondent's performance violation in multiple client matters, and provides for an actual suspension. Standard 2.12(b) applies to respondent's failure to cooperate in a disciplinary investigation, which provides for a reproof.

Standard 1.7(a) provides that if a member commits multiple acts of misconduct, the most severe sanction must be imposed. The most severe sanction applicable is Standard 2.12(a), which applies to respondent's violation of Business and Professions Code section 6103 for disobedience of a court order, and provides for disbarment or actual suspension.

Respondent's misconduct is aggravated by his prior record of discipline, multiple acts of misconduct and failure to make restitution, and mitigated by entry into a pretrial stipulation. The aggravation here outweighs the mitigation. While this is respondent's first disciplinary matter in California, in light of the aggravation, a one-year stayed suspension, one-year probation with conditions, including a 60-days' actual suspension is appropriate to protect the public, the courts and the legal profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

Case law supports this level of discipline. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, the attorney failed to render competent legal services, failed to comply with Supreme Court orders and failed to report judicial sanctions timely. The attorney engaged in the misconduct while representing a client in an appeal of a capital sentence. The attorney was granted seven requests

for an extension to file an Appellant's Opening Brief, after which the Court issued an order stating that no further requests would be granted. Despite this order, the attorney made two additional requests for extensions. The Court denied the attorney's ninth request for an extension, after which the attorney failed to file the brief timely and filed a motion to withdraw instead. The Court denied the motion and ordered that a brief be filed by the attorney. The Court also held that if the attorney did not file a brief timely, it would issue an Order to Show Cause ("OSC") as to whether the attorney should be sanctioned or held in contempt. The attorney nonetheless failed to file a brief. After an OSC was held, the attorney was found guilty of contempt and sanctioned \$1,000. The misconduct was aggravated by multiple acts and harm and mitigated by 17 years of discipline-free practice, good character and pretrial stipulation to undisputed facts. The attorney received a six-month stayed suspension.

Like the attorney in *Riordan*, respondent failed to comply with a court order. Respondent has considerably more acts of misconduct than in *Riordan*, including failures to perform, failure to uphold laws, failure to inform a client of significant developments and receipt of an illegal fee. Respondent does not have the mitigation of the absence of a prior record of discipline and also has aggravation for a prior record of discipline, multiple acts and failure to make restitution. In light of the overall greater severity of respondent's misconduct, the level of discipline here should be more severe than in *Riordan*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 9, 2017, the discipline costs in this matter are \$3,669. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

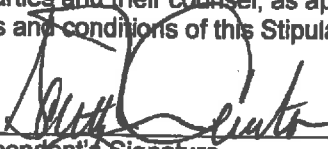

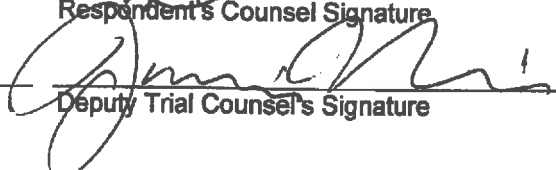
Respondent may not receive MCLE credit for completion of the ethics courses or State Bar Ethics School, ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: <b>SCOTT MICHAEL CANTOR</b>	Case number(s): <b>16-J-10756-CV</b>
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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.

<u>3.27.17</u> Date	 Respondent's Signature	<u>Scott Michael Cantor</u> Print Name
<u>4-4-17</u> Date	 Respondent's Counsel Signature	<u>David Kestenbaum</u> Print Name
<u>4/6/2017</u> Date	 Deputy Trial Counsel's Signature	<u>Jamie Kim</u> Print Name

(Do not write above this line.)

In the Matter of:  
**SCOTT MICHAEL CANTOR**

Case Number(s):  
**16-J-10756-CV**

### 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.
1. On page 6 of the stipulation, numbered paragraph F.(5), the following sentence is added at the end of the paragraph "The State Bar's Office of Probation must approve that such in-person or live online-webinar satisfies this legal ethics requirement before respondent attends or completes such course."; and
  2. On page 10 of the stipulation, numbered paragraph 38, line 4, "Morris" is deleted, and in its place is inserted "BJN's attorney".

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.)**

May 2, 2017  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
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, 2017, 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 STEPHEN KESTENBAUM  
KESTENBAUM LAW GROUP, APC  
14401 SYLVAN ST  
STE 100  
VAN NUYS, CA 91401**

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

**JAMIE J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 2, 2017.



Paul Barona  
Case Administrator  
State Bar Court



(State Bar Court No. 16-J-10756)  
S242702

IN THE SUPREME COURT OF CALIFORNIA **SUPREME COURT  
FILED**

En Banc

SEP 05 2017

In re SCOTT MICHAEL CANTOR on Discipline

Jorge Navarrete Clerk

Deputy

The court orders that Scott Michael Cantor, State Bar Number 79851, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and he is placed on probation for one year subject to the following conditions:

1. Scott Michael Cantor is suspended from the practice of law for the first 60 days of probation;
2. Scott Michael Cantor must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed on May 2, 2017; and
3. At the expiration of the period of probation, if Scott Michael Cantor has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Scott Michael Cantor must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. One-third of the costs must be paid with his membership fees for each of the years 2018, 2019, and 2020. If Scott Michael Cantor 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.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

\_\_\_\_ day of **SEP 05 2017** 20\_\_\_\_  
Month

By: \_\_\_\_\_

Deputy

**CANTIL-SAKAUYE**  
Chief Justice

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## CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 July 3, 2019, 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 S. KESTENBAUM  
Kestenbaum Law Group, APC  
14401 Sylvan St., Ste 100  
Van Nuys, CA 91401-2626

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

Joseph A. Silvoso, III, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 3, 2019.

  
\_\_\_\_\_  
Paul Songco  
Court Specialist  
State Bar Court

1 Kestenbaum Law Group APC  
2 David S. Kestenbaum, Esq. (SBN 85228)  
3 14401 Sylvan Street, Suite 100  
4 Van Nuys, CA 91401  
5 Telephone: (818) 616-4312  
6 E-mail: [david@kestenbaumlawgroup.com](mailto:david@kestenbaumlawgroup.com)

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Attorneys for Defendant, Scott M. Cantor

**FILED**

**MAR 19 2019**

P.B.

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT- LOS ANGELES

SBC-19-0-30065

IN THE MATTER OF:

) Case No. 18-O-17275

SCOTT M. CANTOR,  
SBN 79851,

) ANSWER OF SCOTT M. CANTOR  
) TO DISCIPLINARY CHARGES

A MEMBER OF THE STATE BAR

) HEARING DATE:  
) TIME:  
) DEPT:

22  
23 **NOW COMES** Scott M. Cantor (hereinafter referred to as CANTOR) in response to  
24 disciplinary charges (hereinafter CHARGES) made by the State Bar of California in case  
25 number 18-O-17275, for himself alone and no other person.

26 CANTOR denies generally each and every CHARGE made with in the complaint in  
27 the above referenced case.

28 ///

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2  
3 **FIRST AFFIRMATIVE DEFENSE**

4 1. CANTER is informed and believes and based upon such information and belief,  
5 alleges that CANTOR'S alleged failure to comply with the State Bar's order of compliance  
6 to discipline as alleged in the State Bar's complaint, is excusable due to a serious medical  
7 condition suffered by CANTOR.

8 This medical condition is as follows: In January 2017, CANTOR was diagnosed with  
9 Long B Cell Non-Hodgkin's Lymphoma, a cancer. CANTOR started Immunol and Chemo  
10 therapy, which lasted more than 6 months. During this therapy, CANTOR had a serious  
11 reaction to the Chemo therapy and was hospitalized for several days. Within 4 to 6 weeks of  
12 the conclusion of the Immunol and Chemo therapy CANTOR suffered an immediate and  
13 extreme weight gain of 40 lbs. This weight gain has yet to be explained and CANTOR has  
14 had continuous testing to determine what has caused this weight gain and inability to lose the  
15 weight.

16 In addition to the weight gain, and a further reaction to the cessation of the cancer  
17 treatments, CANTOR suffers from memory difficulties and loss, concentration issues, issues  
18 with repeating thing he just spoke, and continuous fatigue. He is continuously treats for  
19 these issues, are slowly subsiding but are still a significant problem. CANTOR is currently  
20 under the care of an Endocrinologist.

21 CANTOR believes and based upon this belief, that he will be able to comply fully  
22 with the State Bar's mandate if he can receive a one-year extension to complete the ordered  
23 discipline.

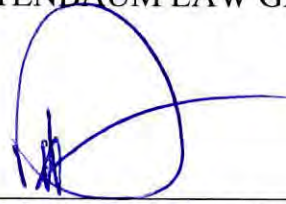
24 WHEREFORE CANTOR prays the following:

- 25 1. That the State Bar take no negative affirmative action at this time;  
26 2. That this matter be stayed, and CANTOR be granted a one-year extension of time to  
27 comply with the State Bar's orders;  
28

1 3. and the State Bar grants any other further relief that may be within its authority.  
2

3 Dated: March 18, 2019  
4

KESTENBAUM LAW GROUP APC

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6 

7 David S. Kestenbaum, Esq. Attorney for CANTOR  
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**PROOF OF SERVICE**

State of California, County of Los Angeles:

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 14401 Sylvan Street, Suite 201, Van Nuys, California 91401.

On March 19, 2019 I served the foregoing document(s) described as **Answer to State Bar Complaint** the interested parties in this action as follows:

☒ [ X ] by placing ☐ [ ] the original ☒ [ X ] a true copy thereof enclosed in sealed enveloped addressed as follows:

State Bar of California  
Office of the Chief Trial Counsel  
845 South Figueroa Street  
Los Angeles, California 90017-2515


☒ [ X ] **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings and other matters for mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Van Nuys, California in the ordinary course of business. I am aware that on a motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of this mailing affidavit.

☐ [ ] **BY FAX:** I transmitted a copy of the foregoing document(s) this date via facsimile to the numbers shown above.

☒ [ X ] **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the person name on this service list.

☒ [ X ] [State] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 17, 2019 at Van Nuys, California.

  
Stephen H. Beecher JD, Senior Paralegal  
Declarant

# Public Matter

**FILED**

**2/20/2019**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES  
MK**

STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
RIZAMARI C. SITTON, No. 138319  
ASSISTANT CHIEF TRIAL COUNSEL  
ANTHONY J. GARCIA, No. 171419  
SUPERVISING ATTORNEY  
JOSEPH A. SILVOSO, III, No. 248502  
DEPUTY TRIAL COUNSEL  
845 South Figueroa Street  
Los Angeles, California 90017-2515  
Telephone: (213) 765-1247

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

**SBC-19-O-30065**

In the Matter of:

) Case No. 18-O-17275

SCOTT M. CANTOR,  
No. 79851,

) NOTICE OF DISCIPLINARY CHARGES

A Member of the State Bar

## **NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE  
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT  
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU  
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN  
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION  
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.  
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE  
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN  
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT  
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Scott M. Cantor ("respondent") was admitted to the practice of law in the State of  
4 California on June 23, 1978, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 COUNT 1

7 Case No. 18-O-17275  
8 Business and Professions Code, section 6068(k)  
9 [Failure to Comply with Conditions of Probation]

10 2. Respondent failed to comply with conditions attached to respondent's disciplinary  
11 probation in State Bar Case no. 16-J-10756 (California Supreme Court Case no. S242702) as  
12 follows, in willful violation of Business and Professions Code, section 6068(k):

- 13 A. Respondent failed to, within 30 days from the effective date of discipline in the  
14 above referenced matter, contact the Office of Probation and schedule a meeting  
15 with respondent's assigned probation deputy to discuss the terms and conditions  
16 of probation.
- 17 B. Respondent failed to comply with the condition of probation that required him to  
18 meet with the probation deputy in-person or by telephone.
- 19 C. Respondent failed to submit written quarterly reports to the Office of Probation on  
20 or before April 10, 2018 and July 10, 2018 stating, under penalty of perjury,  
21 stating whether respondent complied with State Bar Act, the Rules of Professional  
22 Conduct, and all conditions of probation during the preceding calendar quarter.
- 23 D. Respondent failed to submit a final report before the last day of the period of his  
24 probation.
- 25 E. Respondent failed to show proof of passage of the Multistate Professional  
26 Responsibility Examination ("MPRE") to the Office of Probation within one year  
27 of the effective date of discipline.



1 F. Respondent failed to either: attend a session of State Bar Ethics School, pass the  
2 test given at the end of that session, and provide satisfactory proof of same to the  
3 Office of Probation within one year of the effective date of his discipline; or in the  
4 alternative, complete six hours of live in-person or live online-webinar of  
5 Minimum Continuing Legal Education ("MCLE") approved courses in legal  
6 ethics offered through a certified MCLE provider in the State of Nevada or  
7 California and provide satisfactory proof of same to the Office of Probation  
8 within one year of the effective date of the discipline.

9  
10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
12 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
13 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
14 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
15 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
16 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**  
17 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
18 **RECOMMENDED BY THE COURT.**

19  
20 **NOTICE - COST ASSESSMENT!**

21 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**  
22 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**  
23 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**  
24 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**  
25 **PROFESSIONS CODE SECTION 6086.10.**

26 Respectfully submitted,

27 THE STATE BAR OF CALIFORNIA  
28 OFFICE OF CHIEF TRIAL COUNSEL

29 DATED: 2/19/2019

30 By:   
31 JOSEPH A. SILVOSO, III  
32 Deputy Trial Counsel

# DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 18-O-17275

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

## NOTICE OF DISCIPLINARY CHARGES



**By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



**By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**



**By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").



**By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



**By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



**(for U.S. First-Class Mail)** in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)



**(for Certified Mail)** in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,  
Article No.: 9414 7266 9904 2111 0134 55 at Los Angeles, addressed to: (see below)



**(for Overnight Delivery)** together with a copy of this declaration, in an envelope, or package designated by UPS,  
Tracking No.: addressed to: (see below)

Person Served via U.S. Certified Mail and U.S. First-Class Mail:	Business-Residential Address	Fax Number	Courtesy Copy to:
Scott Michael Cantor	Scott Michael Cantor, Ltd. 410 S Rampart Blvd Ste 390 Las Vegas, NV 89145-5749	Electronic Address	

- ☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ("UPS"). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: February 20, 2019

SIGNED:

*Genelle De Luca-Suarez*  
Genelle De Luca-Suarez  
Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST **August 4, 2021**

State Bar Court, State Bar of California,  
Los Angeles

By \_\_\_\_\_  
Clerk

**EXHIBIT 5**

**EXHIBIT 5**



## State of California

### BUSINESS AND PROFESSIONS CODE

#### Section 6068

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6068. It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.  
(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.
- (j) To comply with the requirements of Section 6002.1.
- (k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the State Bar.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

(Amended by Stats. 2018, Ch. 659, Sec. 50. (AB 3249) Effective January 1, 2019.)



## 2021 California Rules of Court

### Rule 9.20. Duties of disbarred, resigned, or suspended attorneys

#### (a) Disbarment, suspension, and resignation orders

The Supreme Court may include in an order disbaring or suspending a licensee of the State Bar, or accepting his or her resignation, a direction that the licensee must, within such time limits as the Supreme Court may prescribe:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and his or her consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- (2) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
- (3) Refund any part of fees paid that have not been earned; and
- (4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

*(Subd (a) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

#### (b) Notices to clients, co-counsel, opposing counsel, and adverse parties

All notices required by an order of the Supreme Court or the State Bar Court under this rule must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to the disbarred, suspended, or resigned licensee.

*(Subd (b) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

#### (c) Filing proof of compliance

Within such time as the order may prescribe after the effective date of the licensee's disbarment, suspension, or resignation, the licensee must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule. The affidavit must also specify an address where communications may be directed to the disbarred, suspended, or resigned licensee.

*(Subd (c) amended effective January 1, 2019; previously amended effective December 1, 1990, and January 1, 2007.)*

#### (d) Sanctions for failure to comply

A disbarred or resigned licensee's willful failure to comply with the provisions of this rule is a ground for denying his or her application for reinstatement or readmission. A suspended licensee's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

*(Subd (d) amended effective January 1, 2019; previously amended effective January 1, 2007; previously relettered and amended effective December 1, 1990.)*

*Rule 9.20 amended effective January 1, 2019; previously amended and renumbered effective January 1, 2007; adopted as rule 955 effective April 4, 1973; previously amended effective December 1, 1990.*

**EXHIBIT 6**

**EXHIBIT 6**



**From:** [Dawn Meeks](#)  
**To:** ["scott cantor"](#)  
**Cc:** [Dan Hooge](#)  
**Bcc:** [Louise Watson](#)  
**Subject:** State Bar of Nevada Communication re File No. RD21-0679  
**Date:** Tuesday, June 29, 2021 2:50:00 PM  
**Attachments:** [SBC-20-N-30251 cert docs.pdf](#)  
[image001.png](#)  
**Importance:** High

---

Mr. Cantor,

The State Bar has received the enclosed disciplinary documents from California State Bar *In the Matter of Scott Michael Cantor*, Case NO. SBC-20-N-30251 that resulted in your disbarment on March 1, 2021. I am the investigator assigned to this matter.

Please explain why you failed to inform the State Bar of Nevada of your disbarment as required by Supreme Court Rule 114.

**Please give this matter your immediate attention as the State Bar is in the process of preparing a Petition for Reciprocal Discipline pursuant to SCR 114.** This is a lawful demand for information from the Office of Bar Counsel in conjunction with an investigation. If no response is received from you, the screening panel of the Southern Nevada Disciplinary Board, may be asked to consider your failure to respond as a failure to cooperate with the State Bar in its efforts to enforce Rules of Professional Conduct, which will be considered as a separate disciplinary violation pursuant to RPC 8.1(b) (Bar Admission and Disciplinary Matters).

Your response is due by **July 2, 2021**.

*Dawn Meeks, CP*  
Senior Certified Paralegal / Investigator  
Office of Bar Counsel  
**Direct Dial:** (702) 317-1439  
**Main Number:** (702) 382-2200

State Bar of Nevada  
3100 W. Charleston Blvd., Suite 100  
Las Vegas, NV 89102  
[www.nvbar.org](http://www.nvbar.org)



**Notice of Confidentiality:** The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking any action in reliance upon, this information by anyone other than the intended recipient is not authorized.

*The Office of Bar Counsel (OBC) is committed to fighting the outbreak of coronavirus (COVID-19). All OBC staff will work remotely for the immediate future. We will not receive physical mail on a regular basis. This may delay or adversely affect your matter with the OBC. We ask that you communicate through email to [dawnm@nvbar.org](mailto:dawnm@nvbar.org). Thank you for your patience and cooperation during this difficult time.*