

(State Bar Court Case No. 02-O-13738; 02-O-15022)

S131684

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

SUPREME COURT  
**FILED**

MAY 19 2005

Frederick K. Ohlrich Clerk

DEPUTY

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IN RE EMANUEL D. ZOLA ON DISCIPLINE

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It is ordered that **EMANUEL D. ZOLA, State Bar No. 207404**, be suspended from the practice of law for 90 days, that execution of the suspension be stayed, and that he be placed on probation for one year subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on January 4, 2005. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and one-fifth of said costs must be added to and become part of the membership fees for the years 2006, 2007, 2008, 2009 and 2010. (Bus. & Prof. Code, § 6086.10.)

  
\_\_\_\_\_  
Chief Justice

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<b>Counsel for the State Bar</b> THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT ELI D. MORGENSTERN, No. 190560 1149 S. Hill Street, 10th Fl. Los Angeles, CA 90015-2299 Telephone: (213) 765-1334	<b>Case number(s)</b> 02-0-13738-JMR 02-0-15022-JMR	(for Court's use) <b>ORIGINAL</b>  <b>FILED</b> <i>pa</i>  <b>JAN 04 2005</b> <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>Counsel for Respondent</b> ARTHUR MARGOLIS, Bar No. 57703 2000 RIVERSIDE DR. LOS ANGELES, CA 90039-3758 (323) 953-8996	<div style="display: flex; justify-content: space-around;"> <div>           kwiktag®   </div> <div>035 134 761</div> </div>	
<b>In the Matter of</b>  EMANUEL ZOLA  Bar # 207404  A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  STAYED SUSPENSION; NO ACTUAL SUSPENSION  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

## A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 6, 2000  
(date)
- (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 and order consist of 12 pages.
- (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) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ costs added to membership fee for calendar year following effective date of discipline
  - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:  
costs shall be added to and become part of membership fees for the years 2006, 2007,  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure) 2008, 2009,  
2010.
  - ☐ costs waived in part as set forth under "Partial Waiver of Costs"
  - ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

B. Aggravating Circumstances: For definition, see Standards for Attorneys' Disciplinary Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

(1) ☐ Prior record of discipline [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case \_\_\_\_\_

(b) ☐ date prior discipline effective \_\_\_\_\_

(c) ☐ Rules of Professional Conduct/ State Bar Act violations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) ☐ degree of prior discipline \_\_\_\_\_

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline".

(2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☐ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☐ No aggravating circumstances are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances (see standard 1.2(e).) Facts supporting mitigating circumstances are required.

- (1) ☐ No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ Restitution: Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ Good Faith: Respondent acted in good faith.
- (8) ☐ Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ 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.
- (10) ☐ 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.
- (11) ☐ Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances:

See attached page 11

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of ninety (90) days
- ☐ i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
  - ☐ ii. and until Respondent pays restitution to \_\_\_\_\_ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \_\_\_\_\_, plus 10% per annum accruing from \_\_\_\_\_ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
  - ☐ iii. and until Respondent does the following: \_\_\_\_\_

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of one (1) year which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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.
- (4) ☐ Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (5) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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.

- (6) ☒ Within one (1) \_\_\_\_\_ of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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.
- (7) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (8) ☒ The following conditions are attached hereto and incorporated:
- ☐ Substance Abuse Conditions ☒ Law Office Management Conditions
- ☐ Medical Conditions ☐ Financial Conditions
- (9) ☐ Other conditions negotiated by the parties:

- ☒ Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended.

In the Matter of  
EMANUEL ZOLA  
A Member of the State Bar

Case Number(s):  
02-0-13728-JMR  
02-0-15022-JMR

Law Office Management Conditions

- a. ☐ Within \_\_\_\_ days/ \_\_\_\_ months/ \_\_\_\_ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.

- JMR*  
b. ☒ Within \_\_\_\_ days/ 6 months \_\_\_\_ years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 2 hours of MCLE approved courses in law office management, ~~attorney-client relations and/or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 2201, Rules of Procedure of the State Bar).~~

- c. ☐ Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for \_\_\_\_ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

Respondent may take an MCLE approved course(s) in Law Office Management or Law Practice Management. The course(s) shall be in person or participatory. Respondent shall receive MCLE credit for attending the course(s).



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

IN THE MATTER OF:       EMANUEL ZOLA

CASE NUMBER(S):       02-O-13728-JMR  
                                  02-O-15022-JMR

**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 Rules of Professional Conduct.

Case No. 02-O-13738-JMR

Facts

In or about April 2002, Respondent represented Jason Adams ("Adams") in a misdemeanor criminal matter entitled *People v. Jason Adams*, case number 1PN02240. The matter was set in Division 113 of the Van Nuys District of the Los Angeles Superior Court before the Honorable Debra Katz Weintraub ("Judge Weintraub").

On or about April 4, 2002, the day before Adams's trial was to begin, Respondent contacted the court and informed the court that he would be late. Once Respondent arrived in court, Judge Weintraub informed him that there would be "consequences" if he was late again. Judge Weintraub ordered Respondent and the deputy district attorney to meet at 10:00 a.m. on April 5, 2002, and to be back in court at 10:30 a.m.

On or about April 5, 2002, Respondent did not meet with the deputy district attorney at 10:00 and he was not in court at 10:30 a.m., when the Adams's case was called for trial. Respondent's secretary informed the court via telephone that Respondent would be late because he was not feeling well. The court recalled Adams's case at 11:13 a.m., 12:03 p.m., and 1:30 p.m. and Respondent still had not arrived in court. Respondent arrived in court at 1:42 p.m. Judge Weintraub set an order to show cause ("OSC") for five days after the conclusion of Adams's trial as to why Respondent should not be ordered to pay the County of Los Angeles \$250 for violating the court's order to meet and confer with opposing counsel and to timely appear for trial on April 5, 2002. Judge Weintraub ordered counsel to be back in court on April 8, 2002, at 8:30 a.m.



On or about April 8, 2002, Respondent did not appear at 8:30 a.m., but arrived at 9:00 a.m. Following some trial proceedings, the judge ordered the defendant and counsel back at 1:30 p.m. Respondent did not appear in court at 1:30 p.m., but instead arrived at 1:50 p.m. The judge ordered the defendant and counsel to be back in court on April 9, 2002, at 10:00 a.m.

On or about April 9, 2002, Respondent was not present in court at 10:00 a.m. Respondent arrived in court at 10:28 a.m. and the court set a second OSC for five days after the conclusion of Adams's trial as to why Respondent should not be sanctioned \$28, one dollar for each minute Respondent was late. Judge Weintraub ordered the defendant and counsel to be back in court on April 10, 2002, at 11:00 a.m.

On or about April 10, 2002, Respondent was not present in court at 11:00 a.m. Respondent called the court at 11:10 a.m. to inform them that he had a medical problem with his foot. At or about 11:55 a.m. Respondent arrived and told the court that he did not feel well. Judge set a third OSC for five days after the conclusion of Adams's trial as to why Respondent should not be sanctioned \$55, one dollar for each minute Respondent was late. Judge Weintraub ordered counsel to be back in court on April 11, 2002, at 9:00 a.m.

On or about April 11, 2002, Respondent was not present in court at 9:00 a.m. The case was recalled at 11:48 and at 1:49 p.m. and Respondent was still not present in court. Judge Weintraub ordered the defendant and counsel to be back in court on April 12, 2002, at 8:30 a.m.

On or about April 12, 2002, Respondent was not present in court at 8:30 a.m. Shortly after 8:30 a.m., Respondent's secretary phoned the court to explain that Respondent knew he was to be in court, but that he had had an anxiety attack. The secretary asked for, and was provided, the court's facsimile number so that she could fax a report from Respondent's doctor. The court never received a report from Respondent's doctor. Adams, who was present in court, informed Judge Weintraub that he had not heard from Respondent and therefore the court appointed counsel for Adams.

On or about April 23, 2002, the court vacated all three OSCs and referred the matter to the State Bar.

### Legal Conclusion

By failing to appear on time at Adams's criminal trial as ordered by the court, Respondent disobeyed court orders requiring him to do acts in the course of his profession which he ought in good faith to do, in wilful violation of Business and Professions Code section 6103.

Facts

In or about 2002, Respondent represented Gabriel Jose Rojas ("Rojas") in a misdemeanor criminal matter entitled *People v. Gabriel Jose Rojas*, case number 2SE04263. The matter was set in Division 3 of the Huntington Park District of the Los Angeles Superior Court before Commissioner Rita J. Baird ("Commissioner Baird").

On or about September 10, 2002, Respondent appeared at a pretrial hearing. Commissioner Baird set another pretrial for September 24, 2002.

On or about September 24, 2002, neither Respondent nor Rojas appeared at the pretrial hearing. The court left several unreturned telephone messages for Respondent that morning and when he did not return the court's calls, a bench warrant was issued for Rojas's arrest. In the afternoon of September 24, 2002, Respondent phoned the court and spoke with the court clerk. Respondent was advised by the clerk of the bench warrant for Rojas, and was also advised by the clerk to appear at 9:00 a.m. on the following day, September 25, 2002. Respondent informed the clerk that he would appear.

On or about September 25, 2002, Respondent failed to appear in court and failed to contact the court to explain his absence.

On or about October 2, 2002, Rojas was brought to court in custody. The court clerk called Respondent several times that day. Respondent's telephone answering machine would not accept voice messages, but stated that the caller could leave a numeric message. The court clerk left the court's telephone number in several numeric messages on Respondent's telephone answering machine. When Respondent failed to contact the court by the end of the day, a public defender was appointed for Rojas.

Respondent never contacted Rojas or the court with respect to Rojas's case after September 24, 2002.

Legal Conclusion

By failing to appear in court on September 25, 2002, as advised by the court clerk, Respondent failed to maintain the respect due to the courts of justice and judicial officers, in wilful violation of Business and Professions Code section 6068(b).

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was December 1, 2004.

### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
02-O-13738-JMR	TWO	rule 3-110(A) of the Rules of Professional Conduct
02-O-13738-JMR	THREE	rule 3-700(A)(2) of the Rules of Professional Conduct
02-O-15022-JMR	FOUR	Business and Professions Code section 6103
02-O-15022-JMR	FIVE	rule 3-110(A) of the Rules of Professional Conduct
02-O-15022-JMR	SIX	rule 3-700(A)(2) of the Rules of Professional Conduct

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 1, 2004, the estimated prosecution costs in this matter are approximately \$3,596.50. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

### **AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 2.6(b) of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standard") provides that culpability of an attorney of a violation of Business and Professions Code section 6103 shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline.

## **STATEMENT OF MITIGATION.**

During the period in question, Respondent was an inexperienced attorney. When he first began trial work, he was not familiar with trial scheduling, and he did not quickly enough adjust his approach which had been based upon a more flexible pre-trial and settlement practice. He had also just ended a relationship and was experiencing a great deal of stress.

Respondent had not developed a way of protecting his own economic interests, and he became over-extended without the assistance of others.

He performed a substantial amount of work for both Jason Adams and Gabriel Rojas.

Since the events in question, Respondent has gained valuable experience, he has restructured his practice to obtain support from another attorney, and there have been no client complaints. He has become more organized and is better able to cope with the stress related to the practice of law.

Dec. 2, 2004  
Date

Emanuel Zola  
Respondent's signature

EMANUEL ZOLA  
print name

12/2/04  
Date

Arthur L. Margolis  
Respondent's Counsel's signature

ARTHUR MARGOLIS  
print name

12/03/04  
Date

Eli Morgenstern  
Deputy Trial Counsel's signature

ELI D. MORGENSTERN  
print name

### 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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

1/3/05  
Date

J. M. Remke  
Judge of the State Bar Court



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 July 11, 2013

State Bar Court, State Bar of California,  
Los Angeles

By

  
Clerk