

<p>Counsel for the State Bar</p> <p>THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL BROOKE A. SCHAFER, No. 194824 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1051</p>	<p>Case Number(s)</p> <p>01-O-175-RMT 00-O-13863; 01-O-1347; 01-O-2920; 01-O-4535; 02-O-10536; 01-O-209; 02-O-11575; 01-O-505; 01-O-664; 01-O-783; 01-O-863; 01-O-910; 02-O-12544</p> <p>FILED <small>APR 6 2007</small></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	<p>(for Court use)</p> <p>LODGED <small>APR 19 2007</small></p> <p>NOV 19 2004 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel for Respondent</p> <p>Arthur Lewis Margolis Margolis & Margolis LLP 2000 Riverside Dr. Los Angeles, CA 90039-3758</p>		
<p>In the Matter of Jeffrey Kirk Rubenstein</p> <p>Bar # 167192</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to Pilot Program Judge</p> <p>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</p> <p>kwiktag® 022 606 918</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> 	

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 13, 1993
 (Date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of 21 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 and will pay timely any disciplinary costs imposed in this proceeding.

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 (attachment) of this stipulation under specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

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

- (1) Prior Record of Discipline [see standard 1.2(f)]
 - (a) State Bar Court Case # of prior case _____
 - (b) Date prior discipline effective _____
 - (c) Rules of Professional Conduct/State Bar Action 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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

Mitigating Circumstances [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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (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:

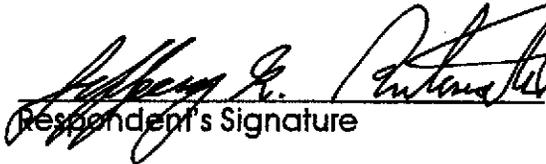
Respondent requests that the Court consider his attached STATEMENT IN MITIGATION, which is combined with his NEXUS STATEMENT.

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

August 20, 2004
Date


Respondent's Signature

Jeffrey Kirk Rubenstein
Print Name

August 20, 2004
Date


Respondent's Counsel Signature

Arthur Margolis
Print Name

August 20, 2004
Date


Deputy Trial Counsel's Signature

Brooke A. Schafer
Print Name

**STIPULATED FACTS and CONCLUSIONS OF LAW
STATE BAR PILOT PROGRAM**

IN THE MATTER OF: JEFFREY KIRK RUBENSTEIN
Bar no. 167192

CASE NUMBERS: 01-O-175-RMT; 00-O-13863; 01-O-1347;
01-O-2920; 01-O-4535; 02-O-10536; 01-O-209;
02-O-11575; 01-O-505; 01-O-664; 01-O-783;
01-O-863; 01-O-910; 02-O-12544

The parties hereby stipulate that the following facts and conclusions of law are true.

JURISDICTION

Respondent was admitted to the practice of law in the State of California on December 13, 1993, and has been a member of the State Bar at all times relevant hereto.

FACTS AND CONCLUSIONS OF LAW

Respondent's substance abuse

Throughout the relevant periods discussed herein, Respondent's substance abuse directly contributed to the misconduct. Among other things, this included decreased professional judgment on Respondent's part. Respondent has provided a detailed explanation of causation in the Nexus Statement earlier lodged with the court in these proceedings, and the court has found a sufficient nexus. In January 2001 Respondent voluntarily entered an in-patient treatment center, where he remained for approximately six months. Following in-patient treatment, he continued the recovery program for another eighteen months.

Investigation no. 01-O-175 (Camarena)

1. On February 14, 2000, Edward Camarena ("Edward") hired Respondent to represent him on a pending felony drug charge while Edward was being held in Los Angeles County Jail. The next day, February 15, 2000, Edward's brother, Henry Camarena ("Henry") paid Respondent the requested \$5000.00 in cash to represent his brother. Both Camarenas believed that Respondent personally would be handling Edward's defense. Respondent gave Henry a receipt for the cash payment, but provided no retainer agreement.

2. On February 24, 2000, a preliminary court appearance was held in Los Angeles Superior Court. Respondent did not appear, but sent attorney Robert Kornforth in his place.

3. On March 1, 2000, another preliminary court appearance was held in Edward's case. Again, Respondent did not appear but sent Kornforth in his place.

4. Kornforth appeared again on March 29, 2000, instead of Respondent. The court set a trial date for April 25, 2000. Respondent was made aware of the trial date.

5. On April 25, 2000, Kornforth appeared instead of Respondent, even though it was the date set for jury trial. Kornforth moved for a continuance due to Respondent's unavailability. The court continued the trial until May 15, 2000.

6. Kornforth was not Edward's attorney of record, nor did he at any time have substantive conversations with Edward for the purpose of ascertaining information helpful to Edward's defense. Kornforth's primary function was to show up and seek continuances from the court.

7. On May 15, 2000, Respondent appeared in court but sought a continuance of the jury trial, explaining to the court that he had been ill. The court continued the matter one week, to May 23, 2000.

8. When Respondent showed up in court on May 15, 2000, it was the first time since being hired on February 14, 2000, that Edward was able to speak with him. Edward had tried several times between February 14 and May 15, 2000, to reach Respondent, including leaving telephone messages and mailing him letters. Henry, too, attempted to reach Respondent by telephone, leaving messages for him. Respondent received all of these messages and letters. However, Respondent never responded to any requests for information from either Edward or Henry between February 14 and May 15, 2000.

9. Additionally, when Respondent met with Edward on May 15, 2000, Respondent apologized for his dilatory performance to date and explained that he had been in a rehabilitation facility. Respondent assured Edward that he would be ready to go to trial on his case on May 23rd.

10. At no time did Respondent seek to withdraw from Edward's case due to a personal inability to perform. At no time did Respondent inform Edward that he was ill or unable to work on his case for any period of time.

11. At the May 23, 2000, jury trial hearing, Kornforth again appeared on Respondent's behalf. Respondent appeared late and the case was sent out to a courtroom for trial and Edward entered a *nolo contendere* plea. The court set over sentencing until June 29, 2000.

12. Both Edward and Henry had grown dissatisfied with the quality of Respondent's

representation. They hired another attorney, Albert Perez, Jr., to either move to withdraw Edward's guilty plea or to help with sentencing.

13. Perez appeared at the sentencing hearing on June 29, 2000. Respondent did not appear, even though he was still attorney of record. Perez was allowed to substitute into the case, and the sentencing hearing was continued to August 1, 2000.

14. Prior to the June 29, 2000, hearing, Perez had attempted to contact Respondent to obtain Edward's file. Perez left two telephone messages and faxed and mailed three letters to Respondent. Respondent did not respond to any of those attempts to reach him. Perez had his staff attempt to reach Respondent as well. At 8:00 p.m. on July 24, 2000, Respondent left his only return message, stating Perez could "pick up the file anytime." Perez's staff called back three times after that to arrange to pick up the file but to no avail. Perez never received Edward's file from Respondent; in fact, one of Edward's co-defendant's attorneys provided a copy of the file to Perez.

15. Perez filed a motion to withdraw Edward's guilty plea, which was denied. On August 1, 2000, the court sentenced Edward to seven years in prison.

16. Henry contested Respondent's fee using the Los Angeles County Bar Association's fee arbitration system. Binding fee arbitration was held on January 7, 2003, with both Henry and Respondent participating. Respondent admitted that he failed to perform any services of value to Edward and that he should refund the \$5000.00 to Henry. The arbitrator awarded Henry \$5000.00 plus \$300.00 costs.

Conclusions of Law – investigation no. 01-O-175

– By not being in contact with his client at any time between date of hire and date of trial, by not informing his client of his inability to work on his case due to incapacity, by not returning his client's calls or letters seeking information, by not appearing on time for the trial on May 23, 2000, by not appearing for sentencing on June 29, 2000, and by not cooperating with his client's new attorney by at least providing the case file; Respondent repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Investigation no. 01-O-2920 (Rojo)

17. In June 2000 Edward Rojo hired Respondent to file a civil case against Rojo's former employer. Respondent agreed to accept the case for \$10,000.00 advance fees. Rojo and his family paid Respondent \$5000.00 of the fee up-front, and Respondent agreed to take the case.

18. After taking the Rojos' money, Respondent did minimal work on the case. Rojo and other family members called at least weekly from late July through August 2000 to see what work had been done, and by August 25, 2000, Rojo and his father went to see Respondent in his office. Respondent admitted no legal work had been done, but that he had hired a private investigator, Jack Warren, to do some background investigation work. The next day Rojo's father met with Mr. Warren, who told him he knew nothing about his case and was not doing any work for Respondent.

19. By August 31, 2000, Respondent's telephone numbers had been disconnected and Respondent had no further contact with Rojo. During this time period Respondent repeatedly failed to performed any work on Rojo's case, and in fact effectively abandoned his case.

20. In June 2004 Respondent paid over \$6950.00 to Rojo, representing the advance fees paid plus interest.

Conclusions of Law – investigation no. 01-O-2920 (Rojo)

– By accepting legal employment from Edward Rojo and then doing minimal work of value during the time period June and August 2000, effectively abandoning his case without informing his client, Respondent repeatedly failed to perform legal services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

– By taking nearly four years to refund any of the advanced fees despite doing only minimal work on the case, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-4535 (Butler)

21. In November 2000 Edward Butler retained Respondent to expunge a 1969 criminal conviction. Butler paid Respondent \$1000.00 as a fixed fee for the work.

22. Butler had occasional contact with Respondent from date of hire to early December 2000, but no evidence of work was ever produced. By mid-December 2000 Respondent vacated his office and Butler was unable to locate Respondent. During the period November through December 2000 Respondent repeatedly failed to perform on Butler's legal matter.

23. Respondent did not inform Butler that he was stopping work on his case, nor did Respondent promptly refund any of the \$1000.00 advance fee. Respondent performed no work of any value for Butler. Respondent admitted during the State Bar investigation that Butler was owed a full refund, and he paid Butler over \$1350.00 in June 2004.

Conclusions of Law – investigation no. 01-O-4535

– By performing no work of value on Butler’s case through the period November through December 2000, and effectively abandoning his matter, Respondent repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

– By taking over three years to refund any of the advanced fees despite doing no work on the case, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-505 (Robert Nagao)

24. On November 7, 2000, Robert Nagao (“Robert”) hired Respondent to represent him in a criminal matter in which Robert was being investigated. Robert paid Respondent \$3300.00 in advance fees so that Respondent could look into the matter for him. The legal work was to be done for a fixed fee. No retainer agreement was provided.

25. Respondent had some communications with the investigating detective in the criminal case. However, by late December 2000 Respondent stopped working on Robert’s case, as he was having personal health problems. Respondent notified Robert and told him he would have to find another attorney to work on his criminal matter. Respondent did not fully perform. Respondent told Robert in late December 2000 that he would refund unearned money.

26. Respondent did not timely refund unearned fees to Robert. Although Respondent disputes many of the facts and culpability as to this matter, Respondent did refund over \$4400.00 to Robert in June 2004, representing the \$3300.00 paid plus interest.

Conclusion of law – investigation no. 01-O-505

– By not refunding any of the advanced fees, despite not having fully earned them, until June 2004, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-664 (John Nagao)

27. John Nagao (“John”) hired Respondent on December 6, 2000, for legal work related to a debt collection matter after John had been defrauded of several thousand dollars. John learned of Respondent during his representation of his son, Robert Nagao (see investigation no. 01-O-505). John paid Respondent \$2000.00 on December 6, 2000, and another \$2000.00 the following week pursuant to Respondent’s request for additional funds.

28. Thereafter, however, Respondent stopped working on John’s legal matter as his

health deteriorated. In January 2001 Respondent voluntarily entered an in-patient treatment center, where he remained for approximately six months.

29. Respondent provided no services of value for John, and owed him a refund of unearned advance fees.

Conclusions of Law – investigation no. 01-O-664

– By not refunding any of the advanced fees until June 2004, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-783 (Purhamus)

30. On November 26, 2000, Rachel Purhamus hired Respondent for a criminal defense matter. At the time Purhamus was incarcerated. Respondent asked for \$10,000.00, which Purhamus paid by December 13, 2000.

31. Respondent met with Purhamus in jail in mid-December 2000. He informed Purhamus' mother that he would see them at the arraignment on December 28, 2000. Respondent appeared at the December 28, 2000, arraignment and Purhamus pleaded not guilty. A subsequent court appearance was scheduled for January 12, 2001.

32. On January 12, 2001, Respondent told the court he was sick and asked for a continuance. The court continued the court appearance until January 26, 2001. Respondent, however, had had no contact with Purhamus since late December. Purhamus' mother had been trying to reach Respondent unsuccessfully since January 9, 2001. Respondent would not return messages left on his cell phone, and his office phone had been disconnected.

33. Respondent failed to appear at the January 26, 2001, court appearance. Respondent entered an in-patient treatment facility in late January 2001, but he did not notify Purhamus that she needed to seek alternate counsel. Due to lack of communication, however, Purhamus had secured alternate counsel on her own on January 24, 2001, and sought a return of the retainer she had paid Respondent.

34. Respondent earned none of the \$10,000.00 Purhamus paid in advance as he provided only minimal and/or prefatory services. Respondent made no attempt to refund any of the advance fees paid until June 2004, when he attempted to refund over \$13,000.00, representing the fees paid plus interest. At time of this stipulation Purhamus has not been paid due to a problem with her current address.

Conclusions of Law – investigation no. 01-O-783

– By doing no work of any value for his client during the period from November 2000 through January 2001, by not returning client phone calls requesting information, and by not promptly refunding unearned fees, Respondent repeatedly failed to perform services with competence, in violation of Rules of Professional Services, rule 3-110(A).

Investigation no. 01-O-863 (Horton)

35. On October 24, 2000, Respondent was hired to represent William Horton in a criminal matter, for which Respondent received \$10,000.00 advance fees from Horton's daughter, Desiree. At the time he was retained, Respondent learned that there was an upcoming court appearance set for November 1, 2000.

36. Within a week, however, Horton became concerned about the quality of Respondent's representation, mainly due to his failure to return telephone calls. Horton soon hired a different attorney, who had discussed the matter of alternate representation with Respondent in late October 2000. On October 31, 2000, the new attorney faxed a letter to Respondent informing him that he had been retained and asking that he complete the substitution of attorney and provide all discovery and other documents related to Horton's case.

37. Respondent failed to appear at the court appearance on November 1, 2000. Respondent also failed to respond to Horton's new attorney's letter of October 31, 2000.

38. On November 1, 2000, Horton's new attorney sent Respondent another letter asking for discovery and for return of the \$10,000.00 advance fee. Respondent did not respond in any way to the November 1 letter, nor did he respond to a similar letter sent on November 16, 2000.

39. Horton sued Respondent in January 2001 for breach of contract, conversion and other causes of action. The parties ultimately agreed to settle the suit for \$11,000.00. To date Respondent has not paid this settlement.

Conclusions of Law – investigation no. 01-O-863

– By not refunding any of the advanced fees despite doing no work on the case, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 02-O-10536 (Ngo)

40. Charles Ngo was charged with robbery in August 2000. Attorney James Sussman was appointed to represent Ngo.

41. Sussman made appearances at several court dates in Ngo's case through November 2000. On November 25, 2000, Ngo retained Respondent to take over his criminal defense. Ngo paid Respondent \$4000.00, representing a flat fee for his representation.

42. On December 4, 2000, Sussman and Ngo appeared at time set for the preliminary hearing. Ngo advised the court that he had retained Respondent, and the court continued the preliminary hearing to December 18, 2000. Respondent was made aware of the date for the preliminary hearing in advance.

43. On December 18, 2000, Respondent failed to appear for Ngo's preliminary hearing, which had been set for 8:30 am. The court telephoned Respondent's office and ordered him to appear by 11:00 am. that day. Respondent failed to appear at all, and the court set a contempt hearing for the next day, December 19, 2000. Respondent's office was notified of the next day's contempt hearing.

44. On December 19, 2000, Respondent failed to appear for his contempt hearing, but telephoned the court and told them he was ill. The court continued the contempt hearing one more day, but orders Respondent to provide a doctor's statement regarding his illness.

45. On December 20, 2000, Respondent sent the court a doctor's note but did not personally appear. The court continued the contempt hearing one day. On December 21, 2000, Respondent appeared in court and the contempt issue was taken off calendar. Respondent substituted in as counsel for Ngo, and Ngo's preliminary hearing was continued to January 9, 2001.

46. On January 9, 2001, Respondent failed to appear at Ngo's preliminary hearing. Because of Respondent's prior history of non-appearances former attorney Sussman did appear, and was allowed back on the case through re-appointment. The court continued the preliminary hearing another week.

47. Between January and May 2001, Ngo telephoned Respondent's office several times requesting a refund of the \$4000.00 he paid for representation. Respondent did not respond to any of Ngo's attempts to contact him despite several messages left for him.

48. After December 21, 2000, Respondent effectively abandoned Ngo's case. Throughout the period of representation, through the misconduct described herein, Respondent repeatedly failed to provide legal services of any value to Ngo.

Conclusion of Law – investigation no. 02-O-10536

– By doing no work of value on Ngo's case during the period November 2000 through January 2001, by repeatedly not appearing at Ngo's hearings, and by not refunding any of the

legal fees paid by Ngo despite earning none of them, Respondent repeatedly failed to perform services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Investigation no. 02-O-12544 (Sachmerchian)

49. In late November 2000, Respondent was hired by Ebrahim Sachmerchian to represent him in securing a restraining order. Earlier Sachmerchian had been involved in a physical fight with a neighbor and had started proceedings for a restraining order *in pro per*; Respondent was hired to handle the hearing and finish the matter.

50. Respondent agreed to do the work for \$1200.00, which Sachmerchian paid.

51. Hearing in the matter began on December 14, 2000. Respondent appeared with his client, witnesses were sworn and the court took testimony. The hearing continued to the next day at 1:30 pm. Respondent, however, failed to show up until 3:15 pm on December 15, 2000. Because of the lateness of the court day, the court set up an OSC regarding sanctions for Respondent's late arrival, and continued the restraining order matter to December 18, 2000.

52. On December 18, 2000, Respondent did not appear to finish the hearing on Sachmerchian's restraining order. The court dismissed the petition, and the defense moved for fees and costs.

53. Between December 18, 2000, and December 20, 2000, Sachmerchian tried to contact Respondent at least three times by telephone. By December 20, 2000, Respondent's telephone was disconnected and he had left no forwarding number. On December 20, 2000, Sachmerchian terminated Respondent in a letter which he mailed the same day.

54. At no time did Respondent notify Sachmerchian that he was withdrawing from representation, nor did he take any steps to minimize foreseeable prejudice to his client.

55. In January 2001 Respondent failed to appear at a hearing regarding defense sanctions, despite receiving proper advance notice from the court. The court ordered Respondent personally to pay \$2460.00 in fees and costs to the defendant.

56. Respondent refunded \$1620.00 to Sachmerchian in June 2004, representing fees paid plus interest.

Conclusions of Law – investigation no. 02-O-12544

– By failing to appear at the December 18, 2000, hearing, by failing to notify his client of his intent to withdraw from his case, by failing to seek leave of court to withdraw, and by failing

to take any steps to minimize reasonably foreseeable prejudice to his client, Respondent repeatedly failed to perform services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

– By not refunding any unearned fees until June 2004, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-1347 (Kassa)

57. Kassa Kassa was charged with insurance fraud along with four other co-defendants. He hired Respondent to represent him in this criminal matter in January 2000. Initially Kassa paid Respondent advance fees of \$2500.00. Over the course of their professional relationship Kassa paid Respondent a total of \$3800.00 for legal representation.

58. Respondent missed a number of court appearances scheduled in Kassa's case during 2000. Respondent appeared in court once on behalf of Kassa – in February 2000. On eight other occasions in 2000 an attorney for one of the co-defendants made special appearances on Kassa's behalf, with consent of Respondent, for the sole purpose of continuing the case. On December 5, 2000, however, neither Respondent nor any other attorney appeared on Kassa's behalf. Kassa's matter was continued to February 27, 2001.

59. On February 27, 2001, Respondent again failed to appear. The court suggested Kassa retain different counsel due to Respondent's frequent non-appearances. In March 2001 Kassa retained attorney Anthony Solis, who substituted into the case on April 18, 2001. Within a few weeks of Solis taking over the criminal charges against Kassa were dismissed.

60. Although Respondent did some preliminary work on Kassa's behalf, the work he did was of no value or benefit to Kassa. Due in part to illness and hospitalization, Respondent was unable to properly represent Kassa. Respondent's actions and inactions amounted to an effective withdrawal from representation. At no time, however, did Respondent inform Kassa he was going to stop work on the case or take any steps to avoid foreseeable prejudice to his client.

61. In June 2004 Respondent refunded over \$5000.00 to Kassa, representing the amount paid plus interest.

Conclusions of Law – investigation no. 01-O-1347

– By failing to devote the attention Kassa's case required, by failing to appear at the December 5, 2000, and the February 27, 2001, court appearances, by failing to take steps necessary to prevent foreseeable prejudice to Kassa's case, by failing to notify Kassa that he was unable properly to represent him in his legal matter, and by not refunding any of the advance

fees paid until June 2004, Respondent repeatedly failed to perform services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Investigation no. 02-O-11575 (Markaryan)

62. Ruben Markaryan filed a lawsuit *in pro per* against the Glendale Law Center in 1999. The case was set for jury trial, to commence in October 2000. A few days prior to the trial, Markaryan met Respondent at the courthouse and hired him to do the trial. Markaryan paid Respondent \$1000.00 the same day. The parties agreed that after the trial Respondent would be paid an additional \$1500.00 plus 40% of any recovery. There was no retainer agreement. Respondent understood upon accepting the work that trial was set to begin October 16, 2000.

63. There were two continuances of the start of trial due to Respondent's unavailability. As a result, on October 17, 2000, the court continued the trial into November. Markaryan fired Respondent on October 24, 2000, and asked for return of the \$1000.00 advance fee and his client file. Respondent returned the client file but refused to refund any of the money. Markaryan hired other counsel to assist him in his civil suit.

64. Markaryan subsequently filed a small claims action against Respondent for return of the advance fee. Following a hearing on the merits the court found for Markaryan in the full amount of \$1000.00, plus \$28.00 costs, on November 29, 2001.

Conclusions of Law – investigation no. 02-O-11575

– By not refunding any advance fees despite doing no work on Markaryan's case, and by failing to satisfy any of the judgment that called for him to do the same until June 2004, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Investigation no. 01-O-209 (Esquivel)

65. Respondent was hired to represent Miguel Esquivel in November 2000. Esquivel was being charged with a criminal felony, and his arraignment was set for mid-December 2000. Respondent understood that for many purposes Esquivel's wife and/or daughter would act on Esquivel's behalf, particularly with respect to communications with him. Esquivel's wife paid Respondent an initial payment of \$1500.00, with a second payment of \$1500.00 due before the arraignment.

66. On December 6, 2000, Respondent contacted Esquivel's wife and asked for the second payment early. He reduced the amount of the second payment, however, to \$1250.00, which she then paid in cash.

67. Respondent arranged to continue Esquivel's arraignment to December 20, 2000, due to a conflict with another court appearance. On December 20, 2000, Respondent sent an appearance attorney in his place for the arraignment. This appearance attorney had no personal communication with Respondent beforehand, and had no information for Esquivel. She oversaw Esquivel's entry of a "not guilty" plea and received a court date for an "early disposition hearing." She gave Respondent timely notice of the December 28, 2000, court date.

68. Respondent failed to appear on December 28, 2000. Esquivel received counsel from a public defender, standing in only for the limited purpose of assisting him with that day's early disposition hearing. No disposition was reached, however, and the preliminary hearing was set for January 10, 2001.

69. Also on December 28, 2000, Esquivel's wife spoke to Respondent by phone and told him of the January 10, 2001, court date. Respondent assured her he would be present.

70. Respondent failed to appear for Esquivel's preliminary hearing on January 10, 2001. The court waited for hours before setting the matter over to the next day so that Esquivel and/or his relatives could locate Respondent. The Esquivel's were not able to reach Respondent, however, due to his "voicemail" system being full – no further messages could be left for him. The Esquivel's never heard from Respondent again.

71. On January 11, 2001, the court removed Respondent from Esquivel's case and appointed a public defender in his place.

72. Respondent entered a residential treatment facility on January 26, 2001. At no time has he refunded any of the \$2750.00 advanced fees paid by Esquivel.

Conclusion of Law – investigation no. 01-O-209

– By failing to appear at Esquivel's court appearances set for December 28, 2000, and January 10, 2001, by not properly withdrawing from Esquivel's case by notifying the court or taking any steps to avoid prejudice to his client, by effectively abandoning Esquivel's case, and

by not taking steps to make sure his clients could reach him, Respondent recklessly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Investigation no. 00-O-13863 (Raygor)

73. Respondent was hired by Berto Luna to file suit against Playgirl, Inc., based on statutory and common law rights of privacy. Among other things, Luna alleged that Playgirl

used photographs of him in advertisements for adult "976-type" toll call services without his authorization. Respondent filed the complaint for damages on October 2, 1998. In January 1999 defendant Playgirl, Inc. ("Playgirl") filed its answer, which contained counterclaims against Luna.

74. Respondent did not file a timely reply to Playgirl's counterclaims. Playgirl agreed to extend the time for him to reply to the counterclaims to May 14, 1999. Respondent still failed to file or serve a reply to the counterclaims, and so Playgirl sought a default to the counterclaims, which was granted on May 14, 1999. In September 1999 the court approved and filed the judgment in favor of Playgirl on the counterclaim default in the amount of \$6923.75.

75. On September 22, 1999, Respondent sent a letter to Playgirl's counsel indicating his intent to file a motion to set aside the default judgment.

76. On September 23, 1999, the court issued an Order re: Show Cause why Luna's case should not be dismissed for lack of prosecution for, among other things, Respondent's failure to participate in a Joint Mandatory Status Conference Report.

77. On October 4, 1999, Respondent filed a late response to the Order to Show Cause. In his papers he briefly referred to being ill, without explanation or documentation.

78. In December 1999 Respondent filed a motion to set aside the default judgment on the counterclaims. Again he referred to being ill and having been hospitalized, without elaboration. The court declined to dismiss the plaintiff's case, but set an OSC re why sanctions should not be imposed due to Respondent's failure "on at least two occasions" to comply with court orders and also failure to diligently prosecute the case.

79. In early January 2000 the court set aside the default judgment, but made it conditioned on Respondent reimbursing Playgirl \$7500.00 for its attorneys' fees and costs incurred in seeking the default and an additional \$100.00 sanctions against Respondent, payable to the court, due to the lack of specificity regarding the unexplained illness. The court's decision also recognized that Respondent's office was ill-equipped to handle Luna's case and that Respondent was unable to recognize this fact. Respondent was to pay both ordered amounts by January 24, 2000.

80. Respondent failed to pay either the \$7500.00 reimbursement to Playgirl or the \$100.00 sanction to the court by January 24, 2000. On January 28, 2000, Playgirl filed papers to reinstate the default judgment entered in September 1999.

81. Playgirl had noted Luna's deposition for March 2, 2000. Despite proper subpoenas, neither Respondent nor his client showed up for the deposition on that date.

82. On March 6, 2000, the court reinstated the default judgment against Luna on the counterclaims due to plaintiff's failure to reimburse Playgirl for fees and costs. Respondent had failed to oppose Playgirl's motion.

83. Playgirl moved for summary judgment and other sanctions against Luna. The court granted summary judgment on April 24, 2000 and took the requests for other sanctions under submission.

84. In June 2000 the court granted sanctions in the amount of \$40,630.70 against Respondent personally.

85. The dilatory practices of the Luna civil suit were not the fault of Luna, but rather of Respondent, either personally or by persons under his control. To date, Respondent has paid none of the awarded sanctions. Respondent did not notify the State Bar within thirty (30) days of the sanctions award, as required by Business and Professions Code section 6068(o).

Conclusions of Law – investigation no. 00-O-13863

– By failing to properly prosecute Luna's civil suit, by failing to reply to Playgirl's counterclaim by May 14, 1999, by not timely moving to set aside the default judgment obtained on the counterclaims, by filing a late response to the OSC on October 4, 1999, by failing to pay the January 2000 sanctions ordered by January 24, 2000, by failing to appear at Luna's scheduled deposition, by failing to oppose Playgirl's motion to reinstate the default judgment filed on January 28, 2000, and by not seeking to withdraw from representation once he realized he was not physically able to properly represent Luna, Respondent recklessly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

– By not notifying the State Bar of the imposition of sanctions over \$1000.00 within thirty days of having knowledge, Respondent wilfully violated Business and Professions Code section 6068(o).

Respondent's inactive status

Respondent was on inactive status pursuant to stipulation under B& P Code sec. 6007(b)(3) from August 2001 to May 2003.

RESTITUTION CONDITIONS

As a condition of his Pilot Program compliance in this matter, Respondent shall pay restitution to the following persons (and/or the Client Security Fund, if appropriate) in the following amounts plus 10 percent interest per annum accruing from the dates indicated.

Respondent has made good faith efforts to pay in full all persons listed below, and his

counsel and the State Bar having been working with him to locate the complainants. To the extent Respondent has paid any restitution prior to the effective date of the order arising from this stipulation he shall be given credit for such payments provided satisfactory proof is shown to the Probation Unit of the State Bar.

1. William Horton: \$11,000.00 plus interest from January 1, 2004.
2. Henry Camarena: \$5300.00 plus interest from August 1, 2000.
3. Miguel Esquivel: \$2750.00 plus interest from February 1, 2001.
4. Ruben Markaryan: \$1028.00 plus interest from January 1, 2002.
5. John Nagao: \$4000.00 plus interest from June 1, 2001.
6. Charles Ngo: \$4000.00 plus interest from January 1, 2001.
7. Rachel Purhamus: \$10,000.00 plus interest from February 1, 2001.

● **Respondent expressly waives any objection to payment by the State Bar's Client Security Fund upon a claim(s) for the principal amounts of restitution set forth above, except that Respondent may raise objections based on amounts he has already paid in restitution to the above persons.**

● **In addition, Respondent waives any objections related to the State Bar's (including OCTC, Client Security Fund or State Bar Court) notification to the above parties regarding the amounts due to them under this restitution schedule (whether principal or interest), or regarding assistance in obtaining restitution or payment from the Client Security Fund or from Respondent, at any time after Respondent's admission to the Pilot Program. Respondent expressly waives confidentiality for purposes of effectuating this section re: restitution, has reviewed Rule of Procedure, rule 805 and has had opportunity to consult with counsel prior to this waiver(s).**

COMPLIANCE WITH COURT ORDERS

As a condition of probation, Respondent agrees to fulfill requirements of all orders, whether pre-existing or arising during probation, including orders to pay sanctions, attorneys fees or costs awarded against him personally or jointly, including without limitation:

1. Order of January 26, 2001, *Ebrahim Sachmechian v. Michael Yaghubian*, Los Angeles

Superior Court cause no. BS066497, that, *inter alia*, Respondent pay defendant's counsel David Katz \$2460.00 for attorneys' fees and costs (or as subsequently modified with approval by parties and the court).

2. Order of June 9, 2000, *Berto Luna v. Playgirl, Inc.*, U.S. Dist. Court for Central Dist. of California, cause no. CV 99-165-AHM, that, *inter alia*, Respondent pay defendant Playgirl, Inc. \$40,630.70 for attorneys' fees and costs (or as subsequently modified with approval by parties and the court).

RESPONDENT'S NEXUS STATEMENT AND STATEMENT IN ADDITIONAL MITIGATION

Respondent requests that the Court consider his attached STATEMENT IN MITIGATION, which is combined with his NEXUS STATEMENT.

PENDING PROCEEDINGS

The written disclosure referred to on page 1, section A(6), was provided on August 19, 2004.

////////// END OF ATTACHMENT

1 MARGOLIS & MARGOLIS LLP
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3 Arthur L. Margolis, No. 057703
4 Attorneys at Law
5 2000 Riverside Drive
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STATE BAR COURT
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AUG 27 2004

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Counsel for Respondent

PUBLIC MATTER

FILED

THE STATE BAR COURT

APR - 6 2007

OF THE STATE BAR OF CALIFORNIA

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)

Case No. 01-0-00175-RMT, et al.

JEFFREY KIRK RUBENSTEIN,)
No. 167192)

CORRINGENDUM TO STIPULATION
RE: FACTS AND CONCLUSIONS OF
LAW

A Member of the State Bar)

15 The parties agree that the filed Stipulation Re Facts and Conclusions
16 of Law should be corrected as follows:

17 The paragraph on page 19 (Attachment page 15) immediately
18 following the heading "COMPLIANCE WITH COURT ORDERS" should
19 be modified to state:

20 "As a condition of probation, Respondent agrees
21 to fulfill the following requirements: "

MARGOLIS & MARGOLIS LLP

23 August 26, 2004
24 Date

By:

Arthur L. Margolis
ARTHUR L. MARGOLIS
Counsel for Respondent

THE STATE BAR OF CALIFORNIA

27 August 27, 2004
28 Date

By:

Brooke A. Schaffer
BROOKE A. SCHAFER
Deputy Trial Counsel
Office of the Chief Trial Counsel

ORDER

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

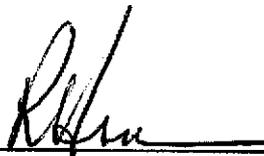
- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

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; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Date

11/19/04


Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 6, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER FILING AND SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

CORRINGENDUM TO STIPULATION RE: FACTS AND CONCLUSIONS OF LAW

in a sealed envelope for collection and mailing on that date as follows:

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

**ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039**

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

Eric Hsu, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 6, 2007**.


Milagro del R. Salmeron
Case Administrator
State Bar Court