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## THE STATE BAR COURT

## ALTERNATIVE DISCIPLINE PROGRAM - LOS ANGELES

In the Matter of	)	Case No. 01-O-04579 et al.
	)	
<b>JON RANDOLPH KNISS,</b>	)	<b>PARTIES' ADDENDUM TO</b>
	)	<b>STIPULATION RE: FACTS AND</b>
<b>No. 141454</b>	)	<b>CONCLUSIONS OF LAW, REGARDING</b>
	)	<b>STATE BAR CASE NO. 06-O-14358</b>
	)	
	)	
A Member of the State Bar	)	

The State Bar of California, Office of Chief Trial Counsel, through Deputy Trial Counsel David T. Sauber, and Respondent, Jon Randolph Kniss, represented by counsel David Clare, submit this Addendum to the Stipulation re: Facts and Conclusions of Law previously lodged on or about August 31, 2006. This Addendum relates solely to State Bar file no. 06-O-14358.

## I. INCORPORATION OF PRIOR STIPULATION

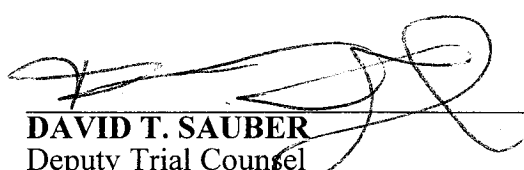
This addendum is intended to supplement the Stipulation re: Facts and Conclusions of Law in case no. 01-O-04579 et al., which the parties lodged with this Court on or about August 31, 2006 (the “Prior Stipulation”). The Prior Stipulation is also incorporated as if fully set forth herein. Attached hereto is the parties’ stipulation as to facts and conclusions of law in State Bar file no. 06-O-14358, involving recent misconduct. At this time there are three other investigations pending against Respondent.

1 **II. THE PARTIES UNDERSTAND THAT THE DISCIPLINE RECOMMENDATION**  
2 **PREVIOUSLY MADE BY THE STATE BAR WILL NOT BE REVISED.**

3 Respondent understands that the matters in this addendum, being additional misconduct,  
4 could result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court  
5 recommending – additional ADP conditions or increased discipline in the underlying cases, up to  
6 and including disbarment. In addition, his length of participation in the court's Alternative  
7 Discipline Program could be extended.

8  
9 **RESPECTFULLY SUBMITTED,**

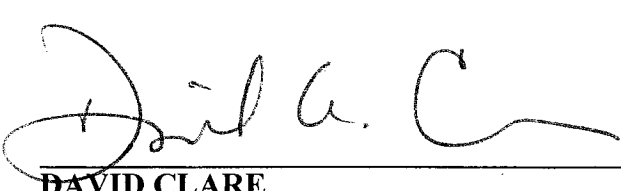
10  
11 Date: 5-2, 2008

12   
13 **DAVID T. SAUBER**  
14 Deputy Trial Counsel  
15 Office of Chief Trial Counsel

16 Date: 4/20/, 2008

17   
18 **JON RANDOLPH KNISS**  
19 Respondent

20  
21 Date: 4/17, 2008

22   
23 **DAVID CLARE**  
24 Respondent's Counsel

**ADDENDUM TO STIPULATED FACTS and CONCLUSIONS OF LAW**  
**STATE BAR ALTERNATIVE DISCIPLINE PROGRAM**

IN THE MATTER OF: **JON RANDOLPH KNISS**

MEMBER # **141454**

CASE NUMBER(s): **06-O-14358**

**STIPULATED FACTS AND CONCLUSIONS OF LAW**

**Prior Stipulation Incorporated Herein**

1. This addendum is intended to supplement the Stipulation re: Facts and Conclusions of Law in case nos. 01-O-04579 et al., which the parties lodged with the Alternative Discipline Program ("ADP") Court on or about August 31, 2006 (the "Prior Stipulation"). The Prior Stipulation is also incorporated as if fully set forth herein.

2. The case described herein was filed subsequent to the Prior Stipulation being entered with the Court. Respondent is currently a participant in the Alternative Discipline Program.

State Bar Court Case Number 06-O-14358

II. On February 3, 2005, Jesse Marquez (Marquez) employed Respondent to defend him in a criminal matter (Los Angeles County Superior Court Case No. VA087095). Respondent represented Marquez through the conclusion of a three-day jury trial in July 2005, when Marquez was convicted of all charges.

III. By July 2005, Respondent had received a total of \$3,200 from Marquez's wife, Cristina, and his grandmother, Sarah. Respondent was still owed about \$1,200 for his representation of Marquez at trial. Cristina promised to pay the balance owed in monthly installments.

IV. After the trial, Marquez employed Respondent to file a notice of appeal. Respondent agreed to file that notice of appeal to preserve Marquez's right to appeal. Respondent also told Marquez that he would not proceed further than the notice of appeal, without payment of additional fees. Respondent did not, however, specify the amount that he required to proceed with the appeal.

V. On September 22, 2005, Respondent filed a Notice of Appeal on behalf of Marquez with the Second Appellate District (Case No. B185942).

VI. Due to his incarceration, Marquez instructed Respondent to communicate through Cristina. Between November 30, 2005, and May 8, 2006, Cristina sent Respondent six money orders of \$100 each, for payment of past due balance. Respondent received those money orders, but he did not tell Cristina that he required additional payment to proceed with Marquez's appeal.

VII. Between November 2005, and August 2006, on at least 13 occasions, Cristina telephoned Respondent on behalf of Marquez and left messages requesting a status update on Marquez's appeal. Respondent received those messages, but he did not return any of Cristina's calls.

VIII. On December 21, 2005, Respondent filed and received an extension of time to file an

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opening brief relating to Marquez's appeal.

IX. On February 15, 2006, Respondent filed and received a second extension of time to file an opening brief.

X. After filing a notice of appeal on behalf of Marquez, Respondent did not clearly explain to Marquez or Cristina that he would not proceed further without additional payment.

XI. On April 28, 2006, Marquez's appeal was dismissed for failure to file an opening brief. Respondent received that notice of dismissal, but he did not notify Marquez or Cristina of that dismissal.

XII. In August 2006, Marquez's appeal was reinstated when Marquez filed a financial statement and an appointment of counsel through the California Appellate Project.

## II. Conclusions of Law.

State Bar Court Case Number 06-O-14358

### Count One

By not returning any of Cristina's 13 phone calls on Marquez's behalf, each requesting a status update about Marquez's appeal, and by not notifying Marquez or Cristina of the court's dismissal of Marquez's appeal, Respondent failed to respond to the reasonable status inquiries of a client and to communicate significant developments in a matter in which Respondent had agreed to provide legal services, in willful violation of California Business and Professions Code section 6068, subdivision (m).

## **RULE 133 NOTICE OF PENDING PROCEEDINGS**

Respondent was notified in writing of any pending investigations not included in this stipulation, pursuant to Rule 133(12), on April 8, 2008.

## **POTENTIAL INCREASE IN DISCIPLINE**

Respondent understands that the matters in this addendum, being additional misconduct, could result in the Office of Chief Trial Counsel seeking – and/or the State Bar Court recommending – additional ADP conditions or increased discipline in the underlying cases, up to and including disbarment. In addition, his length of participation in the court's Alternative Discipline Program could be extended.

## **OPPORTUNITY TO SEEK COUNSEL**

Respondent acknowledges that he has had full opportunity to read and understand this agreement, and to seek counsel if necessary, prior to signing.

//// END OF ATTACHMENT ///

1                                    **DECLARATION OF SERVICE BY REGULAR MAIL**

2    **CASE NUMBER: 01-O-04579 et al.**

3            I, the undersigned, over the age of eighteen (18) years, whose business address and place  
4 of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California  
5 90015, declare that I am not a party to the within action; that I am readily familiar with the State  
6 Bar of California's practice for collection and processing of correspondence for mailing with the  
7 United States Postal Service; that in the ordinary course of the State Bar of California's practice,  
8 correspondence collected and processed by the State Bar of California would be deposited with  
9 the United States Postal Service that same day; that I am aware that on motion of party served,  
10 service is presumed invalid if postal cancellation date or postage meter date on the envelope or  
11 package is more than one day after date of deposit for mailing contained in the affidavit; and that  
12 in accordance with the practice of the State Bar of California for collection and processing of  
13 mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on  
14 the date shown below, a true copy of the within

10                    **PARTIES' ADDENDUM TO STIPULATION RE: FACTS AND**  
11                    **CONCLUSIONS OF LAW, REGARDING STATE BAR CASE**  
                     **NO. 06-O-14358**

12    in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below,  
13 addressed to:

14                    **David A. Clare**  
15                    **444 W. Ocean Blvd., Suite 800**  
                     **Long Beach, CA 90802**

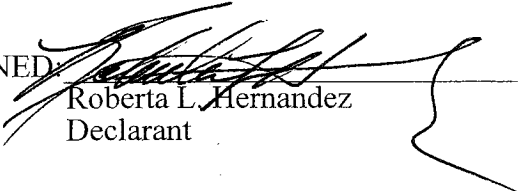
16    in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

17                    **N/A**

18            I declare under penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

20  
21    DATED: May 2, 2008

SIGNED

  
Roberta L. Hernandez  
Declarant

**LODGED**

MAY 01 2007 *ROC*

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

**FILED**

NOV 19 2010 *JK*

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of

JON RANDOLPH KNISS,

Member No. 141454,

A Member of the State Bar.

Case No. 01-O-04579


**ORDER APPROVING STIPULATION**

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and the stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

On pages 31-32 of the Stipulation Re Facts and Conclusions of Law, all language under the heading "Fee Arbitration" is deleted, as such a requirement will be addressed in other ADP documents.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Alternative Discipline Program ("ADP") or does not sign the ADP Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Dated: April 20, 2007

  
RICHARD A. PLATEL  
Judge of the State Bar Court

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<b>State Bar Court of California</b> <b>Hearing Department    <input checked="" type="checkbox"/> Los Angeles    <input type="checkbox"/> San Francisco</b> <b>PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES</b>		
<b>Counsel for the State Bar</b> <b>DAVID T. SAUBER</b> <b>Deputy Trial Counsel</b> <b>1149 South Hill Street</b> <b>Los Angeles, CA 90015</b> <b>(213) 765-1252</b>  <b>Bar #    176554</b>	<b>Case Number(s)</b>  01-O-04579; 01-O-05225; 02-O-13176; 03-O-01568; 03-O-02307; 03-O-04081; 04-O-10603; 04-O-13189; 04-O-13927; 05-O-01388	<b>(for Court use)</b>  <div style="text-align: center;"> <b><del>LODGED</del></b>  <b>MAY 01 2007</b> <i>ACC</i>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div> <div style="text-align: center;"> <b><del>FILED</del></b>  <b>NOV 19 2010</b> <i>AC</i>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
<input checked="" type="checkbox"/> <b>Counsel for Respondent</b> <input type="checkbox"/> <b>In Pro Per</b> <b>DAVID A. CLARE</b> <b>4675 MacArthur Ct., Suite 1250</b> <b>Newport Beach, California 92660</b> <b>(949) 417-5640</b>  <b>Bar #    44971</b>	<b>PUBLIC MATTER</b>	
<b>In the Matter of</b> <b>JON RANDOLPH KNISS</b>  <b>Bar #    141454</b> <b>A Member of the State Bar of California</b> <b>(Respondent)</b>	<b>Submitted to Program Judge</b>  <b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b>  <input 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 July 17, 1989  
(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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists of 34 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."  
See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."  
See Attachment

(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [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 98-O-00324
- (b) ☒ Date prior discipline effective 11/01/00
- (c) ☒ Rules of Professional Conduct/State Bar Action violations RPC Rules 3-110(A) [2 Cnts] and 3-400(B); Business & Professions Code Section 6068(m)
- (d) ☒ Degree of prior discipline Private Reprimand (1 Year) - MPRE and Ethics School Conditions
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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:**

(Do not write above this line.)

**C. 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:**

**ATTACHMENT TO**  
**STIPULATION re FACTS and CONCLUSIONS OF LAW**

IN THE MATTER OF:        **JON R. KNISS**, Member No. 141454

CASE NUMBER(S):        01-O-04579; 01-O-05225; 02-O-13176; 03-O-01568;  
                                 03-O-02307; 03-O-04081; 04-O-10603; 04-O-13189;  
                                 04-O-13927; 05-O-01388

**DISCLOSURE OF PENDING INVESTIGATIONS/PROCEEDINGS NOT RESOLVED BY THIS STIPULATION.**

The disclosure date referred to on page one, paragraph A.(6), was May 4, 2006.

**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.

**Facts for Case No. 01-O-04579:**

1. On September 9, 1994, Linda Tucker, in her capacity as guardian ad litem for James Tucker, a minor at the time, employed Respondent to represent James Tucker in a medical malpractice claim. The parties agreed to a contingency fee arrangement.
2. On May 15, 2000, Respondent filed a complaint on behalf of James Tucker in Los Angeles County Superior Court entitled *Tucker v. Sidedak, et al.*, case no. YCO37593 (the "Tucker action").
3. Respondent named as defendants Rafik Sidrak, M.D., Steven Kaplan, M.D., and Larry Nestor, M.D. among other defendants in the complaint. All three defendants answered the complaint.
4. On March 27, 2001, Nestor filed and properly served Respondent with a motion to compel answers to interrogatories and a motion to compel answers to demand for production of documents. Nestor had previously properly served Respondent with interrogatories and a first set of inspection demands on January 31, 2001, which Respondent received but failed to answer.
5. On March 30, 2001, Kaplan filed and properly served Respondent with a motion to compel answers to special interrogatories, a motion to compel answers to form interrogatories, a motion to compel answers to the first demand for production of documents and a motion for an order deeming admitted the first set of requests for admission. Kaplan had previously properly served Respondent with form and special interrogatories, a first set of inspection demands and a first set of admissions on January 16, 2001, which Respondent received but failed to answer.

Respondent also failed to notify Tucker of his receipt of Kaplan's motions to compel despite Respondent's receipt of the discovery served by Kaplan and the motions.

6. Respondent did provide Tucker with some initial discovery served by the defendants.

7. On March 30, 2001, Nestor and Kaplan brought *ex parte* applications for orders shortening time and specially setting their discovery motions. Despite receiving proper notice of the *ex parte* applications, Respondent failed to appear at the hearing. The court granted the *ex parte* applications, and set the hearings on the pending discovery motions for April 13, 2001. The court set the due date for the oppositions on April 6, 2001.

8. On March 30, 2001, Nestor properly served Respondent with the order on the *ex parte* application brought by Nestor via regular mail, which Respondent received. Despite his receipt of the order, Respondent failed to notify Tucker of the order, and failed to file an opposition to the pending discovery motions.

9. On March 30, 2001, Kaplan properly served Respondent with the order on the *ex parte* application brought by Nestor via personal service, which Respondent received. Despite his receipt of the order, Respondent failed to notify Tucker of the order, and failed to file an opposition to the pending discovery motions.

10. Respondent failed to appear at the scheduled hearing on the pending discovery motions of Nestor and Kaplan on April 13, 2001. At the hearing, the Court granted the pending discovery motions and ordered that answers be served and documents be produced without objection by April 20, 2001. The Court also imposed sanctions on Tucker in the amount of \$800.00 to be paid forthwith. Defendants gave proper notice to Respondent of the court's ruling on the discovery motions, which Respondent received. At no time prior to the April 13, 2001 hearing did Respondent notify Tucker that he would not attend the hearing. Respondent took no steps to avoid the reasonably foreseeable prejudice to Tucker caused by his failure to oppose the motions and his failure to appear at the hearing.

11. Despite his receipt of the notice of ruling, Respondent failed to pay the sanctions as required and failed to provide the outstanding discovery as ordered. He also failed to notify his client of the court's discovery order and the imposition of sanctions.

12. On April 20, 2001, Sidrak filed a *ex parte* application for an order specially setting the hearing on Sidrak's motions to compel responses to discovery, or in the alternative, continuing the trial date. On January 5, 2001, Sidrak had served form interrogatories, special interrogatories and inspections demands on Respondent. Despite receiving several extensions from Sidrak, Respondent failed to provide responses to any of the outstanding discovery. At the March 7, 2001 status conference, Respondent represented to Sidrak's counsel that the "responses were in the mail." However, none were ever received.

13. Despite his receipt of proper notice of Sidrak's *ex parte* application, Respondent failed to appear at the hearing. The court granted the *ex parte* application, and set the hearing on the motions for May 1, 2001, with the due date for the oppositions on April 25, 2001. Despite his receipt of the notice of ruling on the *ex parte* application and Sidrak's discovery motions, which were properly served by personal service, Respondent failed to notify his client of the pending motions and failed to file any oppositions to the motions.

14. On April 24, 2001, Kaplan brought an *ex parte* application for an order specially setting Kaplan's motion for summary judgment and for terminating sanctions. That same date, Nestor brought an *ex parte* application to specially set Nestor's motion to dismiss the action for failure to comply with court order. Despite his receipt of proper notice of the *ex parte* applications, Respondent failed to appear, failed to oppose the applications, and failed to take any steps to avoid reasonably foreseeable prejudice to Tucker based on his failure to appear. The *ex parte* applications were granted, and the motions were set for June 11, 2001. Respondent received proper notice of the rulings on the applications, but failed to notify his client of the orders.

15. On April 24, 2001, Sidrak filed a motion to compel James Tucker's responses to special interrogatories served January 5, 2001. Respondent received proper notice of the motion, but failed to notify his client of receipt of the motion or of the outstanding discovery.

16. On May 1, 2001, the court granted Sidrak's discovery motions. Respondent failed to appear at the hearing. The court imposed sanctions of \$572.00 for each of the three discovery motions against Respondent and Tucker, to be paid within 10 court days of the hearing. The court ordered that discovery responses be served without objection within 20 days of service of the notice of ruling, which was properly served on Respondent on May 9, 2001. Despite his receipt of the notice of ruling, Respondent failed to comply with the court order to provide the discovery. Respondent also failed to pay the sanctions imposed by the court. He also failed to notify his client of the court's order and the sanctions. Respondent took no steps to avoid the reasonably foreseeable prejudice to Tucker caused by his failure to oppose the motions and his failure to appear at the hearing.

17. At the same hearing on May 1, 2001, Kaplan brought an *ex parte* application for an order shortening time on Kaplan's motion to compel the depositions of Tucker and James Tucker. The court granted the *ex parte* application and set the hearing for May 15, 2001. Respondent received proper notice of the *ex parte* application but failed to appear at the hearing. Respondent also received proper notice of the court's order on the *ex parte* application, but failed to notify his client of the court's order.

18. On May 7, 2001, Sidrak and Kaplan both filed and properly served their respective motions for summary judgment on Respondent. Respondent received the motions.

19. On May 10, 2001, Nestor filed and properly served his motion for summary judgment on Respondent. Respondent received the motion.

20. On May 15, 2001, the court granted Kaplan's motion to compel the depositions of Tucker and James Tucker. Respondent had received proper notice of the motion, but failed to oppose the motion or to appear at the hearing. The court ordered Tucker and James Tucker to appear within 10 days for their depositions, which were properly noticed by Kaplan, pursuant to the court order, for May 18, 2001. The court also imposed sanctions of \$360.50 against Tucker, which Respondent failed to pay or disclose to his client, despite his receipt of the order.

21. On May 18, 2001, James Tucker, Tucker and Respondent failed to appear for the court ordered depositions. At no time prior to May 18, 2001 did Respondent inform Tucker or James Tucker of the court ordered depositions.

22. On May 30, 2001, Nestor brought a properly noticed *ex parte* application for an order specially setting Nestor's motion for an order deeming admitted the first set of admissions. Respondent failed to appear at the *ex parte* application. The court granted the *ex parte* application, and set the hearing on the motion for June 7, 2001. The court set the due date for the opposition for June 4, 2001. Despite his receipt of proper notice of the order on the *ex parte* application (which was served by personal service), Respondent failed to notify Tucker of the order.

23. On June 7, 2001, Sidrak's motion to deem admitted the first set of admissions was granted, as was Sidrak's motion for summary judgment. The action was dismissed as to defendant Sidrak. At the same hearing, Nestor's motion to deem admitted the first set of admissions was granted. Respondent failed to appear at the hearing and failed to oppose any of the motions heard that day.

24. On June 11, 2001, the court granted Nestor's motion to dismiss the action based on Respondent's failure to comply with court orders and the failure of the Tuckers to appear at depositions. Respondent failed to appear at the hearing and failed to oppose the motion.

25. Despite receipt of the notices of ruling and the notices of dismissal, which were all properly served on Respondent, Respondent failed to notify Tucker of the dismissal and failed to take any action until December 2001, approximately six months later, to vacate the dismissals.

26. On December 10, 2001, Respondent filed a motion to vacate the orders of dismissal obtained by Nestor and Kaplan on June 11, 2001. Respondent waited until one day shy of six months to file the motion to vacate in which he claimed that the court was mandated under section 473(b) of the Code of Civil Procedure to grant the requested relief based on Respondent's declaration of fault. Respondent admitted in his declaration of fault that his client was not responsible for the failure to comply with discovery. He stated:

**"Despite having received the discovery responses from my clients, I did not respond to the discovery as ordered by the court. The failure to do so was my oversight alone. . . ."**

Nowhere in the motion to vacate did Respondent explain his neglect of the case or his delay in bringing the motion to vacate.

27. Respondent's motion to vacate was not timely under Code of Civil Procedure 473, since it was filed the last day of the six month period, and since Respondent failed to adequately (or at all) explain the reason for the prolonged delay in seeking relief.

28. On January 23, 2002, the court denied Respondent's motion to vacate.

29. On March 11, 2002, Respondent filed a notice of appeal and designation of clerk's transcript on appeal.

30. On April 25, 2002, the clerk of the Court of Appeal properly served Respondent with notice that Respondent was in default for failure to file a Case Information Statement. Respondent received the notice but failed to file the required Statement within ten days or at any time thereafter.

31. On May 14, 2002, the Court of Appeal dismissed the appeal filed March 11, 2002 by Respondent, finding Respondent in default for failing to prosecute the appeal. Despite receiving proper notice of the dismissal, Respondent failed to take steps to reinstate the appeal. He also failed to notify Tucker that the appeal was dismissed.

32. Throughout the pendency of the Tucker action, the court issued a series of orders on discovery motions, imposing sanctions on Respondent and his clients and ordering his clients, through Respondent, to provide written discovery and responsive documents. The orders were all properly served on Respondent at Respondent's address of record in the Tucker action.

33. Despite his receipt of the court orders to pay sanctions and provide discovery, Respondent failed to comply with the court's orders.

**Conclusions of Law for Case No. 01-O-04579:**

COUNT ONE: By failing to respond to discovery, oppose discovery motions, appear for court ordered depositions, appear at court hearings, provide court ordered discovery, pay court imposed sanctions, oppose motions to dismiss, motions for terminating sanctions and motions for summary judgment, and file timely motions to vacate the dismissals, Respondent, *wilfully, RAL* intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

COUNT TWO: By failing to inform Tucker of the discovery motions and hearings, the discovery orders, orders to attend depositions and sanctions orders, the motions to dismiss, the motions for terminating sanctions and the motions for summary judgment, the dismissal orders, the motion to vacate, the denial of the motion to vacate, the appeal and the dismissal of the appeal, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in violation of Business and Professions Code section 6068(m).

COUNT THREE: By failing to pay the sanctions imposed against Respondent in the Tucker action as ordered by the court, and failing to provide the court ordered discovery, Respondent disobeyed a series of orders requiring him to do an act connected with or in the course of his profession in violation of Business and Professions Code section 6103.

**Facts for Case No. 01-O-05225:**

34. On May 15, 2000, attorney Thomas P. Bleau filed a complaint in Los Angeles Superior Court on behalf of George Konik, Linda Tucker and her sons, James and Jeffrey Tucker (the "Tuckers"), entitled *Linda Tucker, et al. v. County of Los Angeles, et al.* (the "Konik-Tucker case"), case no. BC229939, alleging federal civil rights violations.

35. On June 22, 2000, Bleau filed a substitution of attorney, which substituted Respondent into the case in place of Bleau as attorney of record for Konik and the Tuckers. Bleau's office properly served Respondent with a copy of the substitution of attorney via the United States Postal Service at his State Bar membership records address. Moreover, Respondent consented to the substitution by signing it.

36. On October 11, 2000, one of the defendants, the City of Los Angeles, filed a notice of removal of action under 28 U.S.C. §§ 1441(a) and 1446(b). The City of Los Angeles properly served Respondent with a copy of this notice via the United States Postal Service at his State Bar membership records address. Respondent received the notice of removal.

37. On October 18, 2000, the City of Los Angeles filed a Notice to Adverse Party Of Removal To Federal Court In Los Angeles Superior Court (the "adverse party notice"). The case was removed from the Superior Court in Los Angeles and sent to the United States District Court for the Central District of California. Attached to the adverse party notice was a true and correct copy of the Notice of Removal of Action with a new federal court case number stamped on it as follows: CV-00-10829-TJH. The City of Los Angeles properly served Respondent with a copy of the adverse party notice via the United States Postal Service at his State Bar membership records address. Respondent received the adverse party notice.

38. On October 25, 2000, another of the defendants, the County of Los Angeles, filed an answer to the complaint.

39. On April 23, 2001, the United States District Court granted the City of Los Angeles' motion to dismiss.

40. On June 10, 2002, Respondent filed a motion to vacate the dismissal.

41. The court granted the motion to vacate the dismissal on August 16, 2002.

42. Respondent remained counsel of record for plaintiffs in the Konik-Tucker case after the case was reinstated. On October 9, 2002, Respondent filed a Notice that Jon R. Kniss is Counsel of Record for Plaintiffs.

43. On November 22, 2002, the court issued an Order Setting Final Pre-Trial Conference and Referring Discovery Matters (the "second pre-trial order"). The second pre-trial order set the pre-trial conference for June 2, 2003. The clerk of the court properly served the second pre-trial order on Respondent. Respondent actually received the second pre-trial order, and was aware of the second pre-trial conference date.

44. On April 23, 2003, the County of Los Angeles properly served requests for admission on Konik and the Tuckers in the Konik-Tucker case by serving Respondent by mail at his address of record in the Konik-Tucker case. The County of Los Angeles also properly served requests for production by serving Respondent by mail at his address of record in the Konik-Tucker case. Respondent received the discovery served by the County of Los Angeles, but failed to notify his clients of the discovery and failed to provide any responses to the discovery.

45. On May 28, 2003, the court continued the pre-trial conference to June 9, 2003. The clerk of the court properly served the order continuing the pre-trial conference on Respondent. Respondent actually received the May 28, 2003 order, and was aware of the continued pre-trial conference date.

46. Respondent failed to file a pre-trial conference statement in advance of the June 9, 2003 pre-trial conference as ordered by the November 22, 2002 second pre-trial order. Respondent failed to notify his clients that he did not file the required pre-trial conference statement.

47. On June 9, 2003, Respondent failed to appear for the pre-trial conference. As a result, the court sanctioned Respondent \$500.00 and continued the pre-trial conference to June 16, 2003. The clerk of the court properly served the June 9, 2003 order on Respondent. Respondent actually received the June 9, 2003 order, and was aware of the continued pre-trial conference date.

48. At no time did Respondent inform the court, Konik or the Tuckers that he would not be appearing on June 9, 2003, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his clients due to his failure to appear at the pre-trial conference. Respondent did not notify his clients of the imposition of sanctions against him. He did not pay the sanctions at any time.

49. On June 16, 2003, Respondent was in a car accident and, for that reason, did not attend the pre-trial conference. He did receive the June 16, 2003, order of the court and was aware of all subsequent dates in the case.

50. Shortly before the trial set in January 2004, Konik and the Tuckers obtained new counsel in the Konik-Tucker case and substituted out Respondent. They obtained a new trial date from the court, to afford the new attorney an opportunity to get ready for trial.

**Conclusions of Law for Case No. 01-O-05225:**

COUNT TWO: By failing to inform Konik and the Tuckers that he had received discovery from the County of Los Angeles, that he did not file a pre-trial conference statement, and that he would not be appearing at the June 9, 2003, <sup>PRE-TRIAL</sup> Respondent failed to keep a client reasonably <sup>CONFERENCE</sup> informed of significant developments in a matter in which Respondent had agreed to provide legal services in violation of Business and Professions Code section 6068(m). <sup>ADD</sup>

**Facts for Case No. 03-O-04081:**

51. On September 30, 2000, Janice Anderson hired Respondent to substitute in as counsel on her behalf in her personal injury case against Target Stores, Inc. ("Target") entitled *Janice Anderson v. Target Stores, Inc., et al.*, case no. NC023926, filed in Los Angeles Superior Court (the "Target case"). On that same date, Anderson and Respondent entered into a Legal Services Agreement providing for a contingency fee arrangement.

52. Respondent also agreed to represent Anderson in a malpractice suit against her previous attorney, who allegedly prematurely withdrew from representation in the Target case, entitled *Janice Anderson vs. Gary R. Carlin; Law Offices of Gary R. Carlin et al.*, case no. NC030135, filed in Los Angeles Superior Court (the "malpractice case").

53. On September 30, 2000, both Anderson and Respondent signed a substitution of attorney form for Respondent to represent Anderson in the Target case.

54. On that same date, Anderson and Respondent signed a General Authorization and Release form and a Designation of Agent form, which designated Respondent as Anderson's agent.

55. Respondent persuaded Anderson to accept a \$6,500.00 settlement from Target in the Target case. Accordingly, on November 16, 2000, Respondent and Anderson signed a General Release calling for Target to pay Anderson and Respondent \$6,500.00 to release and discharge Target from Anderson's injuries sustained on Target's premises on July 19, 1997.

56. On November 28, 2000, Sedgwick Claims Management Services, Inc., a servicing agent for Target ("Sedgwick"), issued check no. 0141497 in the amount of \$6,500.00 payable to Respondent and Anderson on behalf of Target.

57. On December 18, 2000, Respondent filed a Request For Entry of Dismissal in the Target case.

58. On December 19, 2000, Respondent deposited the settlement check in the amount of \$6,500.00, check no. 0141497, into his Bank of America attorney-client trust account no. 12116644-04451 ("Respondent's CTA"), after Anderson endorsed the check.

59. At no time during since his receipt of the settlement proceeds did Respondent disburse to Anderson her portion of the settlement funds.

60. On June 1, 2001, Respondent filed the complaint in the malpractice action.

61. Carlin filed a petition to compel arbitration which was heard by the court and originally denied on September 14, 2001.

62. Carlin filed a motion for reconsideration of the order denying the petition to compel arbitration, which was heard by the court on December 11, 2001 and granted that day. The court dismissed the malpractice action and retained jurisdiction with respect to the arbitration.

63. In December 2001, Respondent notified Anderson of the court's dismissal of the action and explained that he was appealing the court's decision. He stated that the appeal would take approximately one year.

64. Throughout 2002, Anderson contacted Respondent by leaving detailed telephone messages for Respondent at his office telephone number to obtain a status report on the malpractice action. Respondent did not respond to these messages, despite his receipt of the messages.

65. By February 2003, Anderson had still not heard from Respondent concerning the status of the malpractice action.

66. On February 10, 2003, over two years after Respondent deposited the settlement check in the Target case into Respondent's CTA, Anderson sent a letter to Respondent stating that she never received any settlement funds from Respondent in the Target case, and requested that he provide a status report in the malpractice suit. In the letter, Anderson also informed Respondent that in the past several months, she made many attempts to contact him by leaving voice mail messages, but Respondent neither responded to her messages nor otherwise communicated with her. The letter was sent via certified mail through the United States Postal Service to Respondent's membership records address. Delivery of the certified letter was attempted twice, and notices were left with Respondent for pick-up of the certified letter. However, the certified letter was returned to Anderson by the United States Postal Service as unclaimed.

67. At no time did Respondent contact Anderson after December 2001 to provide a status report on the malpractice action.

68. At no time did Anderson receive her portion of the settlement funds from Respondent in connection with the Target case.

69. Respondent failed to respond to Anderson's letters or telephone calls requesting a status report on the malpractice action from December 2001.

70. Respondent took no further action in the malpractice action after December 2001 to schedule or conduct the arbitration. He failed to take steps to pursue Anderson's claims in the malpractice action after the Superior Court determined that the case was subject to arbitration.

**Conclusions of Law for Case No. 03-O-04081:**

COUNT FIVE: By failing to pay Anderson, <sup>AFTER REQUEST</sup> her portion of the settlement funds in connection with the Target case which she was entitled to receive, Respondent failed to promptly pay client funds as requested by his client in violation of Rule of Professional Conduct 4-100(B)(4).  
<sub>WILL FULL</sub>

COUNT SIX: By failing to respond to Anderson's letters and telephone calls, Respondent failed to respond to Anderson's reasonable status inquiries, in violation of Business and Professions Code section 6068(m).

COUNT SEVEN: By failing to prosecute the malpractice action after December 2001, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).  
<sub>WILL FULL</sub>

**Facts for Case No. 04-O-10603:**

71. On October 31, 2000, Maurice Bourland filed a Complaint For Damages And Injunctive Relief For Employment Discrimination in Los Angeles Superior Court entitled *Maurice Bourland, Plaintiff v. Vons, et al.* (the "discrimination case"), case no. BC239487.

72. In February 2001 Bourland hired Respondent to assume representation in his discrimination case. Bourland signed a retainer agreement with Respondent and paid Respondent with a check from White, the amount of \$2,500.00.  
<sub>IS A TITLED PARTY</sub>

73. On April 19, 2001, the court issued an Order to Show Cause for failure to file proof of service, which was set for hearing on May 17, 2001, which ordered Bourland to show cause why sanctions, including dismissal of this action, should not be imposed. The clerk of the court properly served Bourland with a copy of the OSC via the United States Postal Service at his address of record.

74. On May 16, 2001, Respondent filed a Substitution of Attorney in the discrimination case, substituting in as attorney of record for Bourland.

75. On May 17, 2001, Respondent requested that the OSC hearing set for that day be continued to June 25, 2001. The court granted the continuance, and reset the OSC hearing for June 25, 2001.

76. At the June 25, 2001 OSC hearing, Respondent appeared, but the defendants did not. At the hearing Respondent advised the court that the complaint was served on the defendant on June 21, 2001. The court ordered Respondent to file the proof of service no later than June 27, 2001. The court also scheduled an Initial Status Conference for August 2, 2001. Respondent

was required to provide notice to the defendant.

77. On June 26, 2001, Respondent filed the proof of service showing that one of the defendants, Vons Companies, Inc. (Vons'), was served with the summons and complaint on June 21, 2001.

78. On July 23, 2001, Respondent filed a notice of the August 2, 2001 status conference, with a proof of service, indicating that Respondent served counsel for Vons that day.

79. On July 30, 2001, Respondent filed a Request for Dismissal for Wrongful Termination/Race Discrimination as to defendants Kevin Walaszek, Steve Keleman, John Flanigan, John Marshal and Ed Krocher.

80. At the August 2, 2001 Initial Status Conference, Vons counsel appeared and Respondent sent another attorney, Stanley Landes, to appear on behalf of Bourland. At the conference, the court set trial for February 27, 2002, a Final Status Conference for February 15, 2002, and ordered the parties to mediation, to be completed by November 15, 2001. The parties waived notice at the hearing. However, Landes informed Respondent of the dates set by the court at the hearing.

81. On August 3, 2001, Vons filed an answer to the complaint, and served Bourland.

82. One week after Vons filed its answer, Vons served a first set of document requests on Bourland by properly serving Respondent by mail at his address of record in the litigation. Respondent received the document requests from Vons and sought several extensions from Vons to provide responses. However, Respondent never prepared or served any responses, nor did he take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to respond to the discovery.

83. On August 22, 2001, Vons served a deposition notice to set Bourland's deposition by properly serving Respondent at his address of record. The original deposition notice set the deposition for September 21, 2001. Respondent received the deposition notice, but never notified Bourland of the deposition sought by Vons.

84. On September 20, 2001, the day before the deposition, Respondent called Vons' counsel, Timothy Hall, and requested that the deposition be rescheduled. Pursuant to the agreement of counsel, Bourland's deposition was reset for November 7, 2001. Respondent sent a confirming letter to Hall by fax that day.

85. On October 17, 2001, Vons properly served a second deposition notice for Bourland's deposition. Respondent received the deposition notice. However, he failed to notify Bourland of the November 7, 2001 deposition date.

86. On October 30, 2001, Vons filed and properly served a motion to compel responses to the document requests served by Vons in August 2001, which Respondent had ignored. Respondent received the motion to compel but took no steps to prepare the tardy

responses or to oppose the motion.

87. At no time did Respondent inform Bourland of the motion to compel served by Vons, or his failure to oppose the motion, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to respond to the discovery and oppose the motion.

88. On October 30, 2001, Vons properly served the first set of form interrogatories on Respondent. Respondent received the interrogatories but took no steps to prepare responses.

89. At no time did Respondent inform Bourland of the form interrogatories served by Vons or his failure to respond to them, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to respond to the discovery.

90. On November 6, 2001, Vons' counsel called Respondent concerning the deposition set for the next day. Respondent stated that he did not have the deposition on his calendar, and would not be appearing on November 7, 2001.

91. On November 9, 2001, Vons properly served an amended deposition notice on Respondent, scheduling Bourland's deposition for November 28, 2001. Respondent received the deposition notice but failed to notify Bourland of the deposition. *ON OR ABOUT NOV*

92. The deadline for Respondent to file an opposition to Vons' motion to compel responses to the document requests was November 21, 2001; however Respondent failed to file any response. He never notified Bourland of the pending discovery or the motion to compel. *ON OR ABOUT NOV*

93. On November 29, 2001, neither Respondent nor Bourland appeared for the properly noticed deposition of Bourland. At no time did Respondent notify Vons' counsel that he would not be attending the deposition that day.

94. On November 29, 2001, Vons brought an ex parte application for an order shortening time to file a motion to compel Bourland's deposition and responses to the form interrogatories, to specially set the summary judgment motion, and for sanctions. Vons gave Respondent proper notice of the ex parte application, but Respondent still failed to appear at the hearing. The court granted the ex parte application, setting the hearing for Vons' motion to compel for January 3, 2002. The court also ordered that Vons' motion for summary judgment could be served on shortened time and heard within 30 days of trial. The court reserved February 6, 2002 for the summary judgment motion hearing and set the briefing schedule.

95. On December 5, 2001, Vons properly served Respondent with the notice of ruling on the ex parte application. Respondent received the notice, but failed to notify Bourland of the ex parte application and the court's November 29, 2001 order.

96. That same day, December 5, 2001, the court conducted the hearing on Vons' motion to compel responses to the document requests. Despite having received notice of the

motion, Respondent failed to oppose the motion and failed to appear. The court granted Vons' motion to compel, ordering Bourland to provide responses within 10 days. The court also imposed sanctions in the amount of \$940.00 against Respondent and Bourland to be paid within 30 days. Respondent received the notice of ruling on Vons' motion to compel which was properly served by Vons.

97. At no time did Respondent inform Bourland of the ruling on the discovery motion or take any steps to comply with the court's December 5, 2001 order, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to respond to the discovery and failure to oppose the motion to compel.

98. On December 13, 2001, Vons filed and properly served a motion to compel Bourland's deposition and responses to the form interrogatories, which sought sanctions of \$2,000.00 against Bourland and Respondent. The motion was set for hearing on January 3, 2002. Respondent received the motion to compel, but failed to notify Bourland and failed to prepare and file any opposition to the motion.

99. On December 19, 2001, Vons properly served a demand for exchange of expert witness information. Despite his receipt of the demand, Respondent failed to notify Bourland of the demand and failed to respond to the demand.

100. At the January 3, 2002 motion to compel deposition hearing, Respondent failed to appear. The court granted Vons' motion and ordered Bourland to be available for a deposition and to provide verified responses, without objection, to defendant's interrogatories, on or before January 10, 2002. In addition, the court ordered Respondent and Bourland to pay sanctions of \$1,100.00 to opposing counsel no later than January 25, 2002. Despite his receipt of the notice of ruling properly served by Vons on January 3, 2002 by fax and overnight mail, as ordered by the court, Respondent failed to make Bourland available for deposition, failed to prepare responses to the form interrogatories, and failed to pay the sanctions ordered by the court.

101. At no time did Respondent inform Bourland of the ruling on the discovery motion, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to respond to the discovery and failure to oppose the motion to compel.

102. On January 10, 2002, Vons gave Respondent proper notice of its intent to file an ex parte application for an order shortening time on its motion for terminating and monetary sanctions by sending Respondent a fax and by delivering the letter by overnight mail. Respondent received the notice, but failed to notify Bourland of the ex parte application and failed to appear at the hearing set for January 14, 2001.

103. On January 14, 2001<sup>2</sup>, the court granted Vons' ex parte application, and ordered Vons' motion for terminating and monetary sanctions to be heard on January 18, 2002.

2 MAP  
104. The next day, on January 15, 2002, Vons properly served the notice of ruling on the ex parte application and its for motion for terminating and monetary sanctions. Despite his receipt of the motion for terminating sanctions, Respondent failed to notify Bourland and failed to prepare and file any opposition.

105. At the January 18, 2002 hearing on the motion for terminating sanctions, Respondent failed to appear. The court granted Vons' motion for terminating sanctions and dismissed Bourland's complaint with prejudice.

106. On February 5, 2002, Vons properly served Respondent with the order imposing terminating sanctions. Despite his receipt of the order, Respondent failed to take any steps to reinstate Bourland's case.

107. At no time did Respondent inform Bourland of the ruling on the motion for terminating sanctions, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonably foreseeable prejudice to his client due to his failure to take steps to reinstate Bourland's case after the dismissal.

108. At all times, Respondent was aware of the discovery served by Vons, the notices of deposition served by Vons, the hearing dates on Vons' motions, the filing deadlines in Bourland's case, and the court's rulings on Vons' motions.

109. At no time did Respondent inform Bourland of the court's orders on Vons' various motions, the sanctions orders imposing sanctions in the amounts of \$940.00 and \$1,100.00, and of the dismissal of Bourland's case with prejudice. Further, Respondent did not take any steps to formally withdraw from the matter.

110. On February 18, 2004, the State Bar opened an investigation, case no. 04-O-10603, pursuant to a complaint filed by Bourland, alleging that Respondent failed to perform and abandoned Bourland's case (the "Bourland matter").

111. On April 15, 2004, State Bar Investigator Laurie Collier wrote to Respondent's counsel regarding the Bourland matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent's counsel at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

112. The investigator's April 15, 2004 letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bourland matter. Neither Respondent nor Respondent's counsel responded to the investigator's April 15, 2004 letter or otherwise communicated with the investigator.

113. On May 11, 2004, the investigator sent a second letter to Respondent's counsel requesting Respondent to respond to the allegations in the Bourland matter. Again, the letter

was properly mailed by first class mail, postage prepaid, to Respondent's counsel's membership records address, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

114. At no time did Respondent's counsel or Respondent respond to the investigator's May 11, 2004 letter or otherwise communicate with the investigator.

115. On October 12, 2004, the State Bar investigator sent a letter directly Respondent requesting a response to the allegations in Bourland's complaint. The letter was properly mailed by first class mail, postage prepaid, to Respondent's membership records address by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

116. The investigator's October 12, 2004 letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bourland matter.

117. At no time did Respondent respond to the investigator's October 12, 2004 letter or otherwise communicate with the investigator.

118. On October 26, 2004, the State Bar investigator sent a second letter directly to Respondent requesting a response to the allegations in the Bourland matter. The letter was properly mailed by first class mail, postage prepaid, to Respondent's membership records address by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

119. The investigator's October 26, 2004 letter enclosed a copy of the October 12, 2004 letter and requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bourland matter.

120. At no time did Respondent respond to the investigator's October 26, 2004 letter or otherwise communicate with the investigator.

#### **Conclusions of Law for Case No. 04-O-10603:**

COUNT EIGHT: By failing to respond to discovery, failing to appear for deposition dates, failing to oppose discovery motions, failing to appear at motion hearings, failing to appear for hearings on ex parte applications, failing to comply with the court's discovery orders, failing to pay court imposed sanctions, and failing to take steps to reinstate Bourland's complaint after it was dismissed due to his inaction, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in violation of Rule of Professional Conduct 3-110(A).

*William L. L. L.*

COUNT ELEVEN: By failing to provide a written response to the allegations in the Bourland matter or otherwise cooperate in the investigation of the Bourland matter, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

**Facts for Case No. 04-O-13927:**

121. In approximately October 2000, Steven Glen Miller hired Respondent to represent him in a construction defect dispute concerning the Miller's new home. Miller's contractor, Heinrich Klinger, owner of Eurocraft Construction, was pursuing payment for work performed for Miller, which Miller believed to be defective. At the time Miller hired Respondent, Respondent did not provide a written retainer agreement.

122. Respondent undertook work on behalf of the Millers in early October 2000, and contacted the contractor in an attempt to informally resolve the dispute. On October 31, 2000, Respondent sent a billing statement to Miller indicating a balance due of \$2,100.00.

123. On December 31, 2000, Respondent sent a second billing statement to Miller indicating a balance due of \$1,112.50.

124. On February 13, 2001, the contractor's attorney, Robert Splinter, filed a complaint against Miller and his mortgage holder for breach of contract on behalf of Klinger Incorporated, in a case entitled *Klinger Incorporated dba Eurocraft Construction v. Steven Glen Miller, Chase Manhattan Mortgage Corporation et al*, case no. YC 039740 in Los Angeles Superior Court (the "Eurocraft matter").

125. After receiving the complaint, on February 20, 2001, Respondent sent a letter to Miller along with a copy of the summons and complaint.

126. On February 28, 2001, Respondent sent a billing statement to Miller indicating a balance due of \$162.50.

127. On March 2, 2001, Splinter filed a notice of pendency of action.

128. On March 21, 2001, Respondent filed an answer and cross-complaint for breach of contract, breach of warranty, breach of statutory duties and recovery on license bond on Miller's behalf in the Eurocraft matter.

129. Splinter served discovery on behalf of Klinger on Miller, which Respondent forwarded to Miller on March 23, 2001, along with a copy of the answer and cross-complaint.

130. On March 29, 2001, Respondent filed a Notice of Recording of Release of Mechanic's Lien Bond recorded on March 26, 2001.

131. On March 31, 2001, Respondent sent a billing statement to Miller indicating a balance due of \$1,843.50.

132. On April 9, 2001, Respondent sent a letter to Miller requesting Miller's response to the outstanding discovery served by Splinter.

133. On April 26, 2001, Splinter filed an answer on behalf of the contractor to Miller's cross-complaint.

134. On May 2, 2001, Miller e-mailed his responses to the discovery to Respondent.

135. On May 4, 2001, Respondent provided the draft discovery responses to Miller.

136. On May 8, 2001, Miller sent an e-mail to Respondent with corrections to the discovery.

137. Respondent served the discovery responses and engaged in a first round of discovery propounded to the contractor. Respondent pursued motions to compel further responses to the discovery propounded to the contractor after he found the initial discovery responses deficient.

138. On June 30, 2001, Respondent sent a billing statement to Miller indicating a balance due of \$2,063.50.

139. On July 17, 2001, Respondent and Splinter appeared at the hearing on the motions to compel, which were granted in favor of Miller.

140. The next day, on July 18, 2001, Respondent filed a notice of ruling on the successful discovery motions.

141. On July 20, 2001, Respondent sent Miller copy of the notice of ruling. He later provided a copy of the amended responses to Miller. Throughout this phase of the litigation, from approximately March 2001 through July 2001, Respondent kept Miller informed of the progress of the Eurocraft matter.

142. On August 13, 2001, attorney Patricia Painter, who was of counsel to Respondent's office, appeared at a status conference on Respondent's behalf in the Eurocraft matter. At the hearing, the court ordered the parties to attend a mediation before the final status conference date. The matter was continued to February 4, 2002 for a final status conference and an order to show cause re sanctions for failure to complete mediation. The trial was set for February 14, 2002. The court ordered Splinter to give notice of the status conference order.

143. On August 15, 2001, Splinter filed and properly served Respondent with the notice of ruling on the status conference. Respondent received the notice of ruling.

144. On August 27, 2001, Respondent sent a billing statement to Miller indicating a balance due of \$1,625.00. Respondent billed Miller for the appearance at the status conference on August 13, 2001, and for preparation of a letter to Miller explaining what happened at the status conference in his August billing statement.

145. Respondent continued to work on the Eurocraft matter, which included attending a deposition in late August, and scheduling and preparing for the mediation, which took place on December 7, 2001. The parties did not resolve the Eurocraft matter at the mediation. On December 10, 2001, Respondent sent a billing statement to Miller indicating a balance of \$1,405.50.

146. On January 30, 2002, Respondent sent a billing statement to Miller indicating a balance of \$2,237.50.

147. On February 4, 2002, Respondent appeared at the final Status Conference. The trial date was advanced from February 14, 2002 to March 13, 2002.

148. On February 4, 2002, Respondent filed Proposed BAJI Jury Instructions, Defendant's Witness List and Defendant's Exhibit List. Respondent retained an expert on behalf of Miller and continued to make preparations for the March trial date.

149. On February 7, 2002, Miller made a payment to Respondent in the amount of \$2,237.50 (leaving a balance of \$0.00).

150. On February 25, 2002, Respondent sent a billing statement to Miller indicating a balance due of \$1,950.00.

151. On March 1, 2002, Miller paid an additional \$400.00 to Respondent.

152. On March 9, 2002, Miller made another payment to Respondent in the amount of \$1,950.00.

153. On March 13, 2002, Miller made another payment to Respondent in the amount of \$338.48.

154. Shortly before the trial in March 2002, Respondent told Miller that the case would be better heard before a judge, and convinced Miller to agree to binding arbitration. Up to this point Respondent had billed Miller approximately \$25,000.00 in attorney's fees and expert fees to prepare for trial.

155. Based on Respondent's insistence, Miller and the contractor agreed to binding arbitration. Accordingly, on March 27, 2002, the court ordered the case dismissed without prejudice to setting aside the dismissal for the purpose of entering a judgment on the arbitration award.

156. On March 31, 2002, Respondent sent billing statement to Miller indicating a balance due of \$2,762.50 for work through March 19, 2002.

157. On April 2, 2002, Respondent sent Miller the original Release of Mechanic's Lien filed on February 26, 2002 at the County Recorder's Office.

158. Respondent continued to work on the Eurocraft matter, and repeatedly told Miller throughout the remainder of 2002 he was preparing for the binding arbitration.

159. On April 3, 2002, Respondent sent an e-mail to Miller stating he sent out subpoenas on April 2, 2002 for the workers compensation records of the contractor.

160. On April 5, 2002, Respondent sent Miller a statement from the expert he selected, Forensic Expert Advisers, showing a balance due of \$160.50.

161. On April 17, 2002, Miller sent an e-mail to Respondent disputing the bill from Forensic Expert Advisers. Miller requested a meeting with Respondent on April 26, 2002 to discuss issues regarding the Eurocraft matter.

162. On April 18, 2002, Respondent sent an e-mail to Miller indicating that he received Miller's April 17, 2002 e-mail.

163. On April 25, 2002, Respondent sent an e-mail to Miller confirming their April 26, 2002, 11:30 a.m. appointment. Respondent met with Miller to discuss the Eurocraft matter and binding arbitration.

164. On June 5, 2002, Miller made another payment to Respondent in the amount of \$1,000.00.

165. On September 16, 2002, Miller made another payment to Respondent in the amount of \$1,000.00.

166. On November 29, 2002, Miller made another payment to Respondent in the amount of \$1,000.00.

167. Respondent continued to represent to Miller that he was preparing for a binding arbitration in the Eurocraft matter throughout 2002. He also told Miller he was working to get the workers compensation records of the contractor. However, Respondent stopped performing any legal services related to the Eurocraft lawsuit after July 2002.

168. In late 2002, Miller employed Respondent to obtain a restraining order for Miller (the "Shalvoy matter"). On December 10, 2002, Respondent sent a letter to Miller regarding the Miller v. Shalvoy matter. Respondent stated that the request for a restraining order was denied; however the court granted \$750.00 in attorney fees. In his letter to Miller, Respondent stated that he prepared a civil lawsuit against Shalvoy and would keep Miller posted on the progress of that litigation. This was the last written communication that Miller received from Respondent

concerning any legal matter. Respondent knew about the one year statute of limitations on the Shalvoy matter, but took no further action to file the civil lawsuit he claimed to have prepared on behalf of Miller. Accordingly, the statute of limitations expired.

169. During the time period January 2003 through February 2003, Miller made repeated calls to Respondent at the telephone numbers provided to Miller by Respondent. Miller was unable to reach Respondent, but left detailed messages requesting a return phone call to obtain a status report on both the Eurocraft matter and the Shalvoy matter. Despite having received these messages throughout the first two months of 2003, Respondent failed to respond to any of them.

170. On March 3, 2003, Miller sent a letter via first class mail to Respondent stating that he has not heard from Respondent, despite having left numerous messages for Respondent. In his letter, Miller requested that Respondent contact him regarding the Eurocraft matter, stating that: "nothing has been done on this case for well over eight months now." Miller requested that Respondent contact him to provide a status report in the letter. Despite having received the letter, Respondent failed to respond to Miller.

171. On April 3, 2003, Miller sent another letter to Respondent via first class mail, fax and e-mail requesting that Respondent provide a status report on both the Eurocraft lawsuit and the Shalvoy matter, and specifically requesting that Respondent provide the following items in the Eurocraft matter: a filed copy of the request for a trial date, the amount of monies paid to Respondent with regards to attorney fees, expert fees and filing fees for the years 2000, 2001 and 2002, the name of the expert for the contractor, and a meeting to discuss the case. Miller also requested the following items in the Shalvoy matter: a filed copy of the lawsuit and the proof of service. Despite having received the letter, Respondent failed to respond to Miller.

172. In April 2003, having heard nothing from Respondent, Miller went to the courthouse to see if any lawsuit had been filed in the Shalvoy matter. He found none.

173. On July 7, 2003, Miller sent a third letter to Respondent via first class mail, registered mail, fax and e-mail stating that Respondent has not responded to his previous letters dated March 3, 2003 and April 3, 2003 requesting information. Miller reiterated that despite his prior letters, countless voice messages and e-mails, he had not yet received one word from Respondent regarding to any of his requests for information. In his letter Miller repeated his previous requests to Respondent. Despite having received the letter, Respondent failed to respond to Miller.

174. On June 30, 2004, after almost one year since the July 7, 2003 letter, Miller sent a fourth letter to Respondent requesting the court documents and materials relating to the Eurocraft matter and the Shalvoy matter detailed in his prior letter, due to Respondent's abandonment. Miller also requested all materials in Respondent's possession regarding the Eurocraft matter and the Shalvoy matter. Miller stated that he would pick up his files from Respondent's office on July 12, 2004 at 4:00 p.m. However, when Miller went to pick up his files, he was told the files were not ready and Respondent was not there.

175. Miller continued to leave detailed messages on Respondent's answering machine requesting a status report on his legal matters throughout the time period March 2003 through June 2004. Respondent received each of the multiple messages left by Miller, but failed to respond to any of them.

176. From December 2002 to June 30, 2004, Miller made multiple phone calls, sent various written requests via e-mail, and sent several letters via first class mail and registered mail to Respondent requesting status reports on the two legal matters for which Respondent was retained.

177. Despite having received the phone messages, e-mails and letters, Respondent failed to respond to any of Miller's attempts to communicate with Respondent after December 2002.

178. After securing the binding arbitration agreement in the Eurocraft matter, Respondent took no steps to schedule the arbitration. He ceased all work related to the Eurocraft action after Summer 2002. He neglected to inform Miller that he terminated his employment in the Eurocraft matter at any time. He also failed to release to Miller the files related to the Eurocraft matter so that Miller could seek new counsel.

179. After the hearing on the temporary restraining order in the Shalvoy matter, Respondent did not file a civil lawsuit, despite his representation to Miller that he would file a civil lawsuit. Respondent took no additional action on the Shalvoy matter after December 2002. He also failed to release the Shalvoy file to Miller once Respondent decided to terminate his employment in the Shalvoy matter.

180. By failing take any additional action on either the Eurocraft matter after July 2002 or the Shalvoy matter after December 2002, failing to perform any services of value after December 2002, and failing to respond to Miller's phone calls, e-mails and/or letters since December 2002, Respondent constructively terminated his employment with Miller.

181. Respondent did not inform Miller of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Miller in either the Eurocraft matter or the Shalvoy matter at any time.

182. Miller made multiple written and verbal requests that Respondent release his files related to the Eurocraft matter and the Shalvoy matter.

183. Miller gave Respondent written notice on June 30, 2004 that he intended to pick up his files from Respondent's office July 12, 2004. Respondent neither contacted Miller to reschedule the pick-up or made the files available for pick up at that time.

184. When Miller went to Respondent's office on July 12, 2004, Respondent was not there and Miller's files were not ready for pick up.

185. To date, Respondent has not released to Miller his files in either the Eurocraft matter or the Shalvoy matter.

186. On July 19, 2004, the State Bar opened an investigation, case number 04-O-13927, pursuant to a complaint filed by Miller (the "Miller matter").

187. On October 7, 2004, State Bar Investigator Laurie Collier wrote to Respondent regarding the Miller matter. This letter was placed in a sealed envelope addressed to Respondent at his State Bar of California membership records address. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on October 7, 2004. The United States Postal Service did not return Collier's letter as undeliverable or for any other reason. Respondent did not respond to Collier's letter or otherwise communicated with Collier.

188. On October 26, 2004, Collier sent a follow up letter to Respondent regarding the Miller matter. This letter was placed in a sealed envelope addressed to Respondent at his State Bar of California membership records address. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on October 26, 2004. The United States Postal Service did not return Collier's letter as undeliverable or for any other reason. Respondent did not respond to Collier's letter or otherwise communicated with Collier.

189. The October 7, 2004 and October 26, 2004 letters sent to Respondent requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Miller matter. Respondent did not respond to Collier's letters or otherwise communicated with Collier.

#### **Conclusions of Law for Case No. 04-O-13927:**

COUNT ONE: By failing to undertake any action in the Eurocraft matter after July 2002 to schedule to binding arbitration, failing to perform any work on the Eurocraft matter after July 2002 or the Shalvoy matter after December 2002, and failing to protect the statute of limitations in the Shalvoy matter, Respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in violation of the Rule of Professional Conduct 3-110(A).  
*with 100*

COUNT TWO: By routinely failing to respond to Miller's calls, e-mails and letters, Respondent failed to respond to Miller's reasonable status inquiries in violation of the Business and Professions Code section 6068(m).  
*with 100*

COUNT THREE: By failing to give Miller notice of his intent to terminate his employment with Miller, and failing to take any steps to avoid reasonably foreseeable prejudice to Miller, Respondent improperly withdrew from employment with a client in violation of the Rule of Professional Conduct 3-700(A)(2).  
*with 100*

COUNT FOUR: By failing to release the client files to Miller, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client's papers in violation of the Rule of Professional Conduct 3-700(D)(1).

COUNT FIVE: By failing to provide a written response to the allegations in the Miller matter or otherwise responding to or cooperating in the investigation of the Miller matter, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

**Facts for Case No. 03-O-01568:**

190. On or about March 22, 2002, Geneva Maturino ("Maturino"), employed Respondent to represent her in a civil action in the Los Angeles County Superior Court entitled Geneva Maturino v. Sandra Castellanos, et al., case no. BC271617 ("the Maturino action"). At that time, Respondent agreed to represent Maturino on a contingency basis.

191. Subsequently, on or about April 9, 2002, Respondent filed a complaint on behalf of Maturino against defendants, Sandra Castellanos ("Castellanos"), Juan Carlos Beltran ("Beltran") and Alma Sanchez ("Sanchez").

192. In or about July 2002, Beltran hired attorney Frederic J. Warner ("Warner") to defend him in the Maturino action.

193. On or about July 25, 2002, the court scheduled status conference set for September 20, 2002. Respondent was aware of this court date.

194. Thereafter, on or about July 30, 2002, Warner served Maturino with interrogatories. Maturino was to respond to the interrogatories by September 5, 2002. Respondent was aware of the date in which to respond.

195. At no time did Respondent inform Maturino about the interrogatories and that she had to respond by September 5, 2002.

196. On or about September 5, 2002, Maturino failed to Respond to the interrogatories.

197. On or about September 13, 2002, Warner sent a letter to Respondent requesting Maturino to provide Warner with the responses to the interrogatories. Respondent received the letter, but failed to respond to it.

198. On or about September 20, 2002, Respondent made the unilateral decision to file a request for entry of default as to defendants Sanchez and Castellanos without Maturino's consent. At that time, the court referred the matter to mediation and scheduled a post mediation status conference for December 11, 2002 and a final status conference for February 28, 2003. Further, the court scheduled the matter for trial for March 10, 2003. Respondent was aware of these court dates.

199. At no time did Respondent inform Maturino that he had filed a request for default as to defendants Sanchez and Castellanos and failed to inform Maturino about the court dates.

200. On or about September 23, 2002, Respondent sent a letter to Maturino to advise her that the court had scheduled a trial for March 20, 2003 instead of March 10, 2003 as scheduled by the court.

201. On or about September 24, 2003, the court assigned a mediator to the matter and served a notice of assignment of mediator on Respondent. Again, Respondent failed to inform Maturino that the matter was referred to mediation and that mediator had been assigned to the matter.

202. On or about October 1, 2002, Warner sent second letter to Respondent requesting Maturino to provide Warner with the responses to the interrogatories. Respondent received the letter, but failed to respond to it.

203. On or about October 16, 2002, Warner sent a third letter to Respondent requesting Maturino to provide Warner with the responses to the interrogatories. Respondent received the letter, but failed to respond to it.

204. As a result, on or about October 28, 2002, Warner filed a notice of motion to compel responses to interrogatories and sought sanctions against Respondent and Maturino in the sum of \$1,373.00. The court scheduled a hearing regarding the motion to compel for November 26, 2002. Respondent was aware of this date.

205. On or about November 26, 2002, Respondent did not appear at the scheduled hearing. As a result, the court granted Warner's motion in its entirety and ordered Maturino to provide her responses ten days from the date of the hearing on the motion. In addition, the court imposed sanctions on Respondent and Maturino. On or about the same date, Warner mailed a conformed copy of the court order to Respondent's office.

206. At no time did Respondent give advance notice to Maturino that he would not be appearing on November 26, 2002, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonable foreseeable prejudice to his client. He simply failed to appear on November 26, 2002.

207. On or about December 9, 2002, Maturino and Respondent failed to provide the responses to the interrogatories and failed to pay the court sanctions in the sum of \$1,373.00 pursuant to the November 26, 2002 court order.

208. On or about December 11, 2002, Respondent did not appear at the scheduled status conference. As a result, the court issued an order to show cause due to Respondent and Maturino's failure to appear for the conference, Respondent and Maturino's failure to comply with the court order of November 26, 2002, failure to pay sanctions and Respondent's failure to proceed with the entry of default judgement with regard to defendants Castellanos and Sanchez

filed by Respondent on September 20, 2002. The court scheduled a hearing regarding the notice to show cause for January 13, 2003. Respondent was aware of this date.

209. At no time did Respondent give advance notice to Maturino that he would not be appearing on December 11, 2002, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonable foreseeable prejudice to his client. He simply failed to appear on December 11, 2002.

210. On or about January 13, 2003, Respondent did not appear at the hearing regarding the notice to show cause. As a result, the court dismissed the case.

211. At no time did Respondent give advance notice to Maturino that he would not be appearing on January 13, 2003, nor did Respondent file a motion to withdraw with the court, or take any other steps to avoid reasonable foreseeable prejudice to his client. He simply failed to appear on January 13, 2003.

212. In or about March 2003, Maturino called Respondent and left a message for Respondent regarding the upcoming trial for March 20, 2003. Respondent failed to return Maturino's call.

*MATURINO* 213. On or about March 20, 2003 and unaware of the circumstances surrounding her case, appeared in court. At that time, she was told by the court clerk that the case had been dismissed on January 13, 2003 due to her failure to comply with discovery, failure to appear for an order to show cause hearing and failure to move for entry of default.

214. Between March 20, 2003 and May 2003, Maturino called Respondent's office numerous times and each time messages were left requesting Respondent to return her calls. Respondent failed to return any of the calls.

215. By not taking no further action on behalf of Maturino, Respondent effectively withdrew from representation of Maturino. At no time did Respondent inform Maturino that he was withdrawing from employment.

216. On or about November 26, 2002, the court ordered Respondent and Maturino to pay attorney fees, costs and sanctions to Beltran in the amount of \$1,373.00 within 10 days. The same day, Warner mailed the order to Respondent's address.

217. Subsequently, on or about November 27, 2002, the clerk court served Respondent with a copy of the order by mail to Respondent's address.

218. On April 17, 2003, the State Bar opened an investigation, case no. 03-O-01568, pursuant to a complaint filed by Geneva Maturino ("the Maturino matter").

219. On May 9, 2003, State Bar Investigator Barbara Field wrote to Respondent's counsel, David A. Clare, regarding the Maturino matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent's counsel at his State Bar of California

membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

220. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Maturino matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

221. On May 27, 2003, the investigator wrote to Respondent's counsel again informing Respondent's that she had not yet received a response to the allegations brought up in the Maturino matter. The investigator's letter was placed in a sealed envelope correctly addressed to Respondent's counsel at his State Bar of California membership records address at the time. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason. Respondent failed to submit his response to the allegations in the Maturino matter or otherwise communicate with the investigator.

222. By not providing a written response to the allegations in the Maturino matter or otherwise cooperating in the investigation of the Maturino matter, Respondent failed to cooperate in a disciplinary investigation.

#### **Conclusions of Law for Case No. 03-O-01568:**

COUNT ONE: By not making court appearances, not complying with discovery and failure to move for entry of default, which resulted in the dismissal of the Maturino action, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence. *in violation of Rule 3-110(CA) MAP*

COUNT FIVE: By failing to pay the attorney's fees, costs and sanctions as ordered by the court, Respondent disobeyed an order requiring him to do an act connected with or in the course of his profession in violation of Business and Professions Code, section 6103.

COUNT SIX: By not providing a written response to the allegations in the Maturino matter or otherwise cooperating in the investigation of the Maturino matter, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code, section 6068(i).

#### **Facts for Case No. 04-O-13189:**

223. On July 21, 2004, the State Bar opened an investigation, case number 04-O-13189, pursuant to a complaint filed by Joseph E. Ribal (the "Ribal matter").

224. In the Ribal matter, Ribal alleged that Respondent failed to return his client file in a timely manner.

225. On October 7, 2004 and October 26, 2004, State Bar Investigator Laurie Collier wrote to Respondent regarding the Ribal matter. The investigator's letters were placed in sealed envelopes correctly addressed to Respondent at his then current State Bar membership records address, 2377 Crenshaw Blvd. #252, Torrance, CA 90501. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

226. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ribal matter.

227. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator. In fact, Respondent failed to participate in the State Bar's investigation of the Ribal matter in any way.

**Conclusions of Law for Case No. 04-O-13189:**

COUNT ONE: By failing to provide a written response to the allegations in the Ribal matter or otherwise participating or cooperating in the investigation of the Ribal matter, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i).

**Facts for Case No. 05-O-01388:**

228. On March 23, 2005, the State Bar opened an investigation, case number 05-O-01388, pursuant to a complaint filed by David King (the "King matter").

229. In the King matter, King alleged that Respondent failed to appear in Court, and caused King's civil matter to be dismissed.

230. On July 13, 2005 and August 16, 2005, State Bar Investigator Laurie Collier wrote to Respondent regarding the King matter. The investigator's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar membership records address, 21143 Hawthorne Blvd. #383, Torrance, CA 90503. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

231. The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the King matter.

232. Respondent did not respond to the investigator's letters or otherwise communicate with the investigator. In fact, Respondent failed to participate in the State Bar's investigation of the King matter in any way.

**Conclusions of Law for Case No. 05-O-01388:**

COUNT TWO: By failing to provide a written response to the allegations in the King matter or otherwise cooperating in the investigation of the King matter, Respondent failed to cooperate in a disciplinary investigation in violation of Business and Professions Code section 6068(i)..

**DISMISSALS:**

CASE NUMBER	COUNTS
01-O-05225	1, 3 & 4
03-O-01568	2-4
02-O-13176	7-10
03-O-02307	11-17
04-O-10603	9 & 10

**RESTITUTION:**

CASE NUMBER	AMOUNT	DATE INCURRED	PARTY OWED*
03-O-04081	\$6,500.00	12/19/00	Janice Anderson

In addition to the principal amount(s) listed above, Respondent owes as additional restitution to the designated party, interest on that amount at the rate of ten percent (10%) per annum from the date incurred listed above.

\*Restitution is due the "Party owed" or the *State Bar Client Security Fund* if it has paid.

**FEE ARBITRATION:**

Respondent agrees to write a letter to Steven Glen Miller ("Miller") within thirty days from the date he signs this stipulation, and therein to offer to initiate and participate in binding fee arbitration regarding his fees charged for representation of Miller, upon Miller's request. Respondent shall send this letter via registered mail, and retain a copy of the letter and proof of mailing for the entire period of his Program contract, and present it to State Bar Court, State Bar Probation or the Office of Chief Trial Counsel upon request. Respondent further agrees to initiate, pay the filing fee for, and to participate in binding fee arbitration upon Miller's request, and to abide by the decision of the fee arbitrator. The letter to Miller shall inform Miller of Respondent's obligations pursuant to this provision. Respondent agrees that in any fee

arbitration proceeding regarding the Miller matter he will not use a defense based on statute of limitations. Respondent understands and agrees that his failure to write to Miller, and retain a copy of the letter, or to initiate, pay the filing fee for, or participate in fee arbitration upon any of these client's request, or to abide by the decision of the fee arbitrator, may result in violation of his Alternative Discipline Program agreement. Should Miller not request the fee arbitration within six months of receiving the letter from Respondent offering the arbitration, Respondent shall be relieved of this obligation. Respondent shall note this in bold type in the letter to Miller.

Respondent agrees to write a letter to Maurice Bourland ("Bourland") within thirty days from the date he signs this stipulation, and therein to offer to initiate and participate in binding fee arbitration regarding his fees charged for representation of Bourland, upon Bourland's request. Respondent shall send this letter via registered mail, and retain a copy of the letter and proof of mailing for the entire period of his Program contract, and present it to State Bar Court, State Bar Probation or the Office of Chief Trial Counsel upon request. Respondent further agrees to initiate, pay the filing fee for, and to participate in binding fee arbitration upon Bourland's request, and to abide by the decision of the fee arbitrator. The letter to Bourland shall inform Bourland of Respondent's obligations pursuant to this provision. Respondent agrees that in any fee arbitration proceeding regarding the Bourland matter he will not use a defense based on statute of limitations. Respondent understands and agrees that his failure to write to Bourland, and retain a copy of the letter, or to initiate, pay the filing fee for, or participate in fee arbitration upon any of these client's request, or to abide by the decision of the fee arbitrator, may result in violation of his Alternative Discipline Program agreement. Should Bourland not request the fee arbitration within six months of receiving the letter from Respondent offering the arbitration, Respondent shall be relieved of this obligation. Respondent shall note this in bold type in the letter to Bourland.

(Do not write above this line.)

In the Matter of JON RANDOLPH KNISS Member #141454	Case number(s): 01-O-04579; 03-O-02307; 04-O-13927; 01-O-05225; 03-O-04081; 05-O-01388 02-O-13176; 04-O-10603; 03-O-01568; 04-O-13189;
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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 and Conclusions of Law.

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

If the Respondent is not accepted into the Program or does not sign the 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 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.

8/22/06  
Date  
Respondent's signature

8/28/06  
Date  
Respondent's Counsel's signature

8-29-06  
Date  
Deputy Trial Counsel's signature

JON R. KNISS  
Print name

DAVID A. CLARE  
Print name

DAVID T. SAUBER  
Print name

**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 May 1, 2007, I deposited a true copy of the following document(s):

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND  
ORDERS; STIPULATION RE FACTS AND CONCLUSIONS OF LAW;  
ORDER APPROVING STIPULATION; CONTRACT AND WAIVER FOR  
PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE  
DISCIPLINE PROGRAM**

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:

**DAVID CLARE  
4675 MACARTHUR CT #1250  
NEWPORT BEACH CA 92660**

- [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 **May 1, 2007**.

  
**Angela Owens-Carpenter**  
Case Administrator  
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 January 27, 2011, I deposited a true copy of the following document(s):

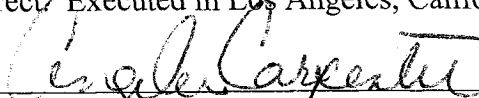
DECISION AND ORDER SEALING CERTAIN DOCUMENTS; PARTIES  
ADDENDUM TO STIPULATION RE: FACTS AND CONCLUSIONS OF LAW  
REGARDING STATE BAR CASE NO. 06-O-14358; STIPULATION RE FACTS AND  
CONCLUSIONS OF LAW AND ORDER APPROVING STIPULATION

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:  
  
JON R KNISS  
369 MONTEZUMA AVE #486  
SANTA FE NM 87501
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 27, 2011.

  
Angela Carpenter  
Case Administrator  
State Bar Court