


Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL LEE ANN KERN, # 156623 1149 South Hill Street Los Angeles, CA 90015-2299	Case number(s) 03-0-1347 [03-0-2284 03-0-4844]	(for Court's use) <div style="text-align: center;"> FILED MAY 03 2004 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel for Respondent JOHN HARTNETT IN PRO PER 1583 Spinnaker, Suite 213 Ventura, CA 93001	<div style="text-align: center;"> PUBLIC MATTER kwiktag® 035 117 116  </div>	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED
In the Matter of JOHN HARTNETT Bar # 49505 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 29, 1971
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation, are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

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

B. Aggravating Circumstances (for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts showing aggravating circumstances are _____ ad.

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

(a) State Bar Court case # of prior case 00-C-10085 and 00-C-10087 (consolidated)

(b) date prior discipline effective January 19, 2001

(c) Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code

Section 6068 (a) in connection with violating Penal Code sections 273.6 (a) (two counts), 240 (one count), and 242 (one count)

(d) degree of prior discipline One year suspension stayed, two year probation with conditions, 60 days actual suspension.

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

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

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

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

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

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

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

(8) No aggravating circumstances are involved.

Additional aggravating circumstances:

- C. Mitigating Circumstances (see Standard 1.2(c).) Facts supporting mitigating circumstances are required.
- (1) No Prior Discipline. Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
 - (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
 - (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
 - (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
 - (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
 - (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
 - (7) Good Faith: Respondent acted in good faith.
 - (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
 - (9) 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:

1. Stayed Suspension.

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

2. Probation.

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

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of SIX MONTHS
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution to Toni Smith [payee(s)] (or the Client Security Fund, if appropriate), in the amount of \$708.34, plus 10% per annum accruing from February 6, 2003 and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she shall remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all

than 30 days, that shall be submitted on the next quarterly report, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, respondent shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) Other conditions negotiated by the parties: See Page 6
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (b), Rules of Procedure.
- No MPRE recommended.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

E. (10) Additional Conditions of Probation, continued from page 5:

Restitution

Within six months from the effective date of discipline in this matter, Respondent must make restitution to Toni Smith or the Client Security Fund if it has paid, in the principal amount of \$608.32 plus interest at the rate of 10% per annum from February 6, 2003, and furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in each quarterly report required herein satisfactory evidence of all restitution payments made by him during that reporting period.

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In the Matter of JOHN HARTNETT

Case Number(s):

A Member of the State Bar

03-0-1347

03-0-2284

03-0-4844

Law Office Management Conditions

- a. Within ___ days/ 6 months/ ___ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ___ days/ ___ months 2 years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 12 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN HARTNETT

CASE NUMBER(S): 03-O-1347, 03-O-2284 and 03-O-4844

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

CASE NUMBER 03-O-01347

COUNT ONE - Business and Professions Code, section 6068(a)
[Failure to Comply With Laws - No Reasonable Inquiry into Evidentiary Support]

1. In or about early 2003, Respondent represented his law partner, attorney Paul Deavenport ("Deavenport"), in a matter filed in the Ventura Superior Court entitled *Bungert v. Deavenport*, case number CIV198766.
2. On or about February 7, 2003, counsel for plaintiffs Douglas and Carol Bungert submitted a Mandatory Settlement Conference Statement to the court which named Jayne Kim ("Kim") as the individual to contact to verify six disciplinary actions pending against Deavenport.
3. At the time plaintiffs' counsel submitted the statement to the court, Kim was a deputy trial counsel in the Office of the Chief Trial Counsel at the State Bar of California's Los Angeles office.
4. On or about February 13, 2003, Respondent submitted a Mandatory Settlement Conference Statement ("Respondent's MSC Statement") on Deavenport's behalf.
5. Respondent's MSC Statement, at page 3, lines 16 and 17, contained the following statement "Ms. Kim is currently facing charges of prosecutorial misconduct at (sic) the Federal District Court."
6. Respondent did not prepare the MSC Statement. Prior to signing and submitting Respondent's MSC Statement to the court, Respondent did not read the content of the document and therefore failed to make a reasonable inquiry into whether there was actually a matter pending in Federal District Court in which Kim was facing charges of prosecutorial misconduct.
7. Had Respondent conducted a suitable inquiry into the evidentiary support for his statement about Kim, Respondent would have discovered that Kim was not facing charges of prosecutorial misconduct in the Federal District Court.
8. **LEGAL CONCLUSION:** By signing and submitting Respondent's MSC Statement with the court thereby certifying that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, that the factual contentions about Kim possessed evidentiary support, Respondent violated Code of Civil Procedure section 128.7(b), and thereby failed to support the laws of the State of California.

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**COUNT TWO - Business and Professions Code, section 6068(i)
[Failure to Cooperate in State Bar Investigation]**

9. In or about February 2003, the State Bar opened case number 03-O-01347 pursuant to a State Bar Investigation ("SBI"). The subject of the SBI was the statement Respondent made about Kim in Respondent's MSC Statement.

10. On or about February 27, 2003, Assistant Chief Trial Counsel Elena Gonzales ("Gonzales") wrote to Respondent regarding the allegation Respondent made about Kim in Respondent's MSC Statement. Gonzales's letter requested that Respondent provide the State Bar with facts and documentation in support of the representation contained in Respondent's MSC Statement about Kim. Gonzales's letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar of California membership 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 Gonzales's letter as undeliverable or for any other reason. Respondent received Gonzales's letter.

11. On or about May 1, 2003, State Bar investigator Chris Doukakis again wrote to Respondent regarding the SBI. The investigator's letter requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the SBI. The investigator's letter was placed in a sealed envelope addressed to Respondent's law partner and former attorney, Vicki Fullington ("Fullington") at Fullington's and Respondent's State Bar of California membership 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. Fullington received the investigator's letter.

12. Neither Respondent nor Fullington responded to the substance of the investigator's letter. Instead, on or about July 24, 2003, Fullington sent a letter to Deputy Trial Counsel John Kelley in which she requested, among other things, that the SBI be handled by an "unbiased" investigator.

13. On or about February 10, 2004, Deputy Trial Counsel Lee Ann Kern ("Kern") wrote to Respondent and Fullington in response to Respondent's request for an ENEC. Kern requested that Fullington, on Respondent's behalf, provide Kern with a written response to the allegations of misconduct in the SBI by February 26, 2004. 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. Fullington and Respondent received Kern's letter.

14. On or about February 24, 2004, Respondent called Kern to request an extension of time until February 27, 2004, within which to provide his response. Kern agreed to the extension.

15. On or about February 27, 2004, Respondent sent Kern a letter via facsimile in which he reiterated Fullerton's requests that, among other things, the matter be handled by individuals who were not directly employed by the State Bar.

16. On or about February 27, 2004, Kern sent Respondent and Fullington a letter via facsimile in which she again requested Respondent's written response to the allegations of misconduct in the SBI. Neither Respondent nor Fullington provided a written response to the substance of the allegations in the SBI.

17. **LEGAL CONCLUSION:** By not providing a written response to the substance of the allegations in the SBI or otherwise cooperating in the investigation of the SBI, Respondent failed to cooperate in a disciplinary investigation, in wilful violation of Business and Professions Code section

CASE NO. 03-O-02284

**COUNT THREE - Rules of Professional Conduct, rule 4-200(A)
[Illegal Fee]**

18. The allegations contained in paragraph 1 are incorporated by reference.

19. On or about March 12, 2002, Toni Smith ("Smith") employed Deavenport to represent her in connection with her workers' compensation appeal and claim for Social Security benefits. By November 17, 2002, Smith had paid Deavenport \$3,750 in legal fees.

20. In or about mid to late January 2003, Smith contacted Deavenport's office and spoke with Respondent who advised Smith that he (Respondent) would now be the attorney working on her case.

21. On or about February 6, 2003, Respondent sent Smith three workers' compensation forms; one for Smith to fill out and two for Smith to sign. On or about February 21, 2003, Respondent requested that Smith pay him legal fees in the amount of \$708.34 and Smith paid Respondent that day by credit card.

22. Respondent knew or should have known that his attorney's fees would be paid out of any benefits awarded to Smith by the Workers' Compensation Appeals Board ("WCAB") and that the WCAB would be the determiner of the reasonableness of his fee. Notwithstanding, Respondent obtained fees from Smith without the approval of the WCAB.

23. **LEGAL CONCLUSION:** By receiving attorney's fees from Smith in a workers' compensation matter without the approval of the WCAB as required by law, Respondent collected an illegal fee, in wilful violation of rule 4-200(A), Rules of Professional Conduct.

**COUNT FOUR - Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]**

24. The allegations contained in paragraph 21 and 22 are incorporated by reference.

25. In or about early or mid March 2003, Smith contacted WCAB Information and Assistance Officer Nina Elias who informed Smith that Deavenport and Respondent should not have taken attorneys fees in her case until the WCAB made its award to her.

26. In or about late March 2003, Smith decided to hire new counsel and on or about March 26, 2003, Smith wrote a letter to Respondent in which she stated that the WCAB informed her that Deavenport and Respondent should not have taken fees from her. Smith asked Respondent for a refund of \$4,458.34, which was the full amount of attorneys' fees she had paid to both Deavenport and Respondent. Respondent did not respond to Smith's letter.

27. On or about June 20, 2003, approximately two weeks after Smith filed complaints against Deavenport and Respondent with the State Bar, Respondent sent Smith a \$200 money order and a promissory note in which he agreed to pay Smith \$200 in July 2003, \$200 August 2003, and \$108 in September 2003. According to the language of the promissory note, Smith's signature on the note would discharge Respondent from all liability in connection with his handling of her worker's compensation matter.

28. On or about August 5, 2003, Smith wrote a letter to Respondent in which she rejected the language in the promissory note discharging Respondent from liability. In her letter, Smith enclosed a

revised promissory note. Respondent never contacted Smith again, nor did Respondent repay Smith any of the balance of the \$608.32 in attorneys' fees he had taken from her without court approval.

29. **LEGAL CONCLUSION:** By failing to return \$608.32, the remainder of the unearned fees Smith paid Respondent, Respondent failed to refund promptly any part of a fee paid in advance that had not been earned, in wilful violation of rule 3-700(D)(2), rules of Professional Conduct.

CASE NUMBER 03-O-04844

**COUNT FIVE - Business and Professions Code, section 6104
[Appearing for a Party Without Authority]**

30. On or about February 26, 2002, Terence Gould ("Gould"), the CEO of Mercury Composite Technologies ("MCT"), retained Attorney John R. Read ("Read") to answer a civil complaint in a matter entitled *United Composite v. Mercury Composite Technologies*, Ventura County Superior Court case number CIV210568.

31. On or about August 21, 2002, 21 days after Attorney Read had been suspended by the Bar, Respondent made a court appearance on behalf of MCT. Gould was unaware of Read's suspension or Respondent's appearance on MCT's behalf.

32. On September 15, 2002, a Substitution of Attorney was filed with the court in which Read was substituted out as MCT's counsel and Respondent was substituted in. Gould did not sign the Substitution of Attorney and was not aware of its existence.

33. On or about September 16, 2002, Respondent made another court appearance on behalf of MCT. Gould was unaware of Respondent's appearance on MCT's behalf.

34. On or about January 30, 2003, another Substitution of Attorney was filed with the court. The second Substitution of Attorney substituted *Deavenport* out as counsel, rather than Respondent and substituted Read back in as MCT's counsel. Gould did not sign the second Substitution of Attorney and was not aware of its existence.

35. It was not until March 2003, when MCT retained new counsel, that Gould discovered that Respondent had made two court appearances on MCT's behalf.

36. **LEGAL CONCLUSION:** By making two court appearances on MCT's behalf without Gould's knowledge or consent, Respondent wilfully and without authority appeared as an attorney for a party to an action or proceeding, in violation of Business and Professions Code, section 6104.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was March 25, 2004.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct ("the standards"):

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline in the current proceeding shall be greater than that imposed in the prior proceeding.

Standard 2.6 provides that culpability of a member of a violation of 6068(a) or 6068(i) shall result in

disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 2.10 provides that culpability of a member of a violation of 3-700(D)(2) shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Case Law:

In *Coviello v. State Bar* (1953) 41 Cal.2d 273, Coviello, who had no prior record of discipline, was given 30 days actual suspension for charging excessive attorney's fees in an industrial accident case. Coviello contended that the client agreed to pay more than that allowed by the Industrial Accident Commission. Notwithstanding, the Court, citing Labor Code section 4906¹, stated that "[t]he obvious purpose of this section is to protect claimants before the commission from the exaction of excessive fees and it constitutes professional misconduct for an attorney to secure or attempt to secure fees in excess of those allowed by the commission." *Id.*, p. 276.

In *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, the Review Department found Phillips culpable of willfully charging an illegal fee; failing to release a client's file promptly upon request; sharing legal fees with a non-attorney; forming a law partnership with a non-attorney; failing to promptly pay the client's funds to the client; failing to account; failing to respond to reasonable status inquiries of the client; solicitation of a prospective client; two counts of failing to perform services competently; and three counts of failing to return unearned fees promptly. Phillips occurred in seven separate matters and spanned a period of just under four years. Phillips, who had no prior record of discipline, was disbarred.

The misconduct and aggravating factors in the instant matter are more serious than in *Coviello* and therefore actual suspension in excess of 30 days is warranted. Although some of the ethical violations committed by Respondent are similar to those occurring in *Phillips*, Respondent's misconduct was less extensive and spanned a shorter period of time. Respondent's ethical violations, when considered with the factors in aggravation, including his prior record of discipline, justify six months actual suspension.

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¹ Labor Code section 4906 provides that "No charge, claim or agreement for the legal services or disbursements mentioned in subdivision (a) of section 4903 [providing for attorney's fees in industrial accident cases] . . . is enforceable, valid, or binding in excess of a reasonable amount."

Date 4/13/04 Respondent's signature [Signature] print name JOHN HARNETT
 Date 4/13/04 Respondent's Counsel's signature [Signature] print name John Harnett
 Date 4/19/04 Deputy Trial Counsel's signature [Signature] print name LEE ANN KERN

ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

Item D. 3. A. ii, (page 4) the correct amount of restitution is \$508.34, therefore delete the \$708.34 and substitute \$508.34;

Item E 10 (page 6) change the amount of restitution to be paid to \$508.34. Add the following language at the end of the paragraph: "The payment of restitution is a condition precedent for the termination of Respondent's actual suspension at the end of six months."

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

Date 4/30/04 Judge of the State Bar Court [Signature]

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

I am a Case Administrator of the State Bar Court. 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 3, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed May 3, 2004**

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

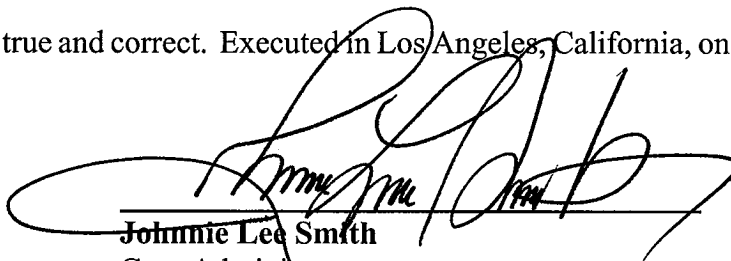
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN HARTNETT
1583 SPINNAKER STE 213
VENTURA CA 93001**

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

LEE ANN KERN , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 3, 2004.



**Johnnie Lee Smith
Case Administrator
State Bar Court**