

ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Joy Chantarasompoth State Bar of California 1149 S. Hill Street Los Angeles, CA 90015-2299 Bar # 222009	Case Number (s) 03-O-03650-DFM	(for Court's use) FILED DEC 21 2007 <i>YJC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Erica Tabachnick A Law Corporation 900 Wilshire Blvd., # 1000 Los Angeles, CA 90017 Bar # 94324	Submitted to: Assigned Judge	
In the Matter Of: Irma Y. Avakian Bar # 177664 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **August 31, 1995**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



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- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts 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 in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "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.

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- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with 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.

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- (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:

See page 10.

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 No Ethics School recommended. Reason:
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.

No MPRE recommended. Reason: **Respondent is no longer practicing law and will be required to complete six hours of Minimum Continuing Legal Education, which the parties believe will better address the instant misconduct. This requirement is in addition to the Minimum Continuing Legal Education she is required to complete as a member of the State Bar of California.**

- (11) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Irma Y. Avakian

CASE NUMBER: 03-O-3650-DFM

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on June 14, 2007 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW

1. On April 19, 2005, the State Bar and Respondent (represented by Erica Tabachnick) entered into a Stipulation as to Facts and Agreement in Lieu of Discipline ("ALD"). The parties stipulated to be bound by all terms and conditions stated in the agreed disposition.

2. The parties stipulated in the ALD that: "Any conduct by the Respondent within the effective period of this agreement which violates this agreement may give rise to prosecution for violation of Business and Professions Code section 6068(l) in addition to prosecution for the underlying allegations."

3. Respondent stipulated that the ALD would have a term of twenty-four months, during which time Respondent would comply with the following conditions:

- Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California.
- During the effective period of this agreement, Respondent shall file written Quarterly Reports not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the conditions of this agreement are in effect, in writing, to the Probation Unit, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of this agreement is less than thirty days preceding any of said dates, Respondent shall file said report on the due date next following the due date after said effective date):

(a) in Respondent's first report, that Respondent has complied with all provisions of the State

Bar Act and Rules of Professional Conduct since the effective date of said agreement;

- (b) in each subsequent report that Respondent has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period;
 - (c) provided, however, that a final report shall be filed covering the remaining portion of the effective period of this agreement following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) thereof;
 - (d) in each such Quarterly Report, beginning with the initial report, Respondent shall indicate
 - (i) whether she is continuing psychotherapy with Dr. Barbara Sax, M.D.;
 - (ii) whether she sought treatment from another mental health care provider, and if so, she shall provide the name and contact information for such provider; and/or
 - (iii) whether she has stopped receiving treatment from all mental health care providers.
- Respondent shall promptly report, and in no event in more than ten days, to the Membership Records office of the State Bar and to the Probation Unit, State Bar Court (Office of Probation), all changes of information including current office or other address for State Bar purposes as prescribed by Business and Professions Code, section 6002.1.
 - Consistent with the above, a mental health reporting condition is included with each Quarterly Report required of Respondent.

4. On April 25, 2005, the Office of Probation sent Respondent a letter outlining the conditions of the ALD and enclosed a tailored Quarterly Report form showing an incorrect final report due date of April 19, 2006. In fact, the final report was due on April 19, 2007.

5. The first year of her ALD, Respondent complied with her conditions and submitted her quarterly reports.

6. On April 10, 2006, Respondent filed her April 10, 2006 quarterly report and quarterly mental health condition report with the Office of Probation. Respondent relied on the pre-printed quarterly reports provided by the Office of Probation indicating that her final report was due in April 2006. At this time, Respondent mistakenly believed her reporting requirements were completed. Consequently, this was the last quarterly report submitted by Respondent.

7. Shortly thereafter, Respondent changed her address but failed to notify Membership Records and the Office of Probation.

8. On May 8, 2006, the Office of Probation sent a letter to Respondent stating that she needed to submit a final report no later than April 19, 2006. This letter was returned by the US Postal Service bearing the stamp, "undeliverable as addressed, forward order expired."

9. On May 24, 2006, the Office of Probation sent Respondent a letter advising her that the previously provided quarterly reports mistakenly stated an ALD completion date of April 19, 2006. The letter stated that the correct completion date was April 19, 2007. This letter was returned by the US Postal Service bearing the stamp, "undeliverable as addressed, forward order expired."

10. The parties stipulated in the ALD signed on or about April 19, 2005, to facts as follows:

- a. In March 1999 Kendra Aragon hired Respondent following an auto accident in which she and three other people were injured. (Accident 1). In May 2000 the same four people were injured in another automobile accident and Respondent agreed to represent them with respect to that accident as well (Accident 2).

Accident 1

- b. In Accident 1, Respondent obtained settlement offers for all four plaintiffs. Three of them, including Aragon, agreed to accept the settlement. One plaintiff, Gina, did not accept the amount offered, and Respondent subsequently filed suit in Los Angeles County on Gina's behalf.
- c. In February 2003, Respondent received checks payable to the three settling plaintiffs; however the plaintiffs' former attorney did not sign the checks and they became stale. Respondent did not contact the insurer until January 2004, when she asked that the checks be re-issued. The three checks were re-issued and the former attorney signed them; however, the messenger service then lost the checks. Respondent did not expend her best efforts to see that new checks were re-issued during 2003, and therefore, her clients had to wait an unnecessary time for their settlement. Moreover, Respondent did not contact her clients to inform them of the nature of the delay during 2003.
- d. In March 2005, Respondent arranged for her former clients to receive their settlement money from the insurer -- Respondent reduced her fees and waived all costs, and client files were returned.
- e. Respondent over time felt Gina was a difficult client, and she also had some reservations personally about the propriety of her client's claims. Respondent withdrew from representing Gina in March 2003, when Gina agreed to sign a Substitution of Attorney. Gina subsequently hired another attorney who settled her case.

Accident 2

- f. In a second accident claim, Accident 2, involving the same four plaintiffs, Respondent filed a complaint on behalf of her clients after the insurer told Respondent they would not settle the matter, as they believed the accident occurred under suspicious circumstances.

- g. Respondent had trouble locating the defendant in the civil suit. Respondent appeared in October 2002 and requested additional time to locate the defendant. The court granted plaintiffs additional time to serve the defendant until February 4, 2003. During the interim Respondent hired an investigator to locate the defendant, but to no avail.
- h. Respondent failed to appear at a February 4, 2003, hearing regarding Accident 2, since the defendant could not be located. The court dismissed the civil suit. Thereafter, Respondent failed to notify her clients that the suit filed in Accident 2, had been dismissed.

Conclusions of Law

11. By failing to file any reports after April 2006, thereby failing to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline, Respondent willfully violated Business and Professions Code section 6068(l).

12. By failing to notify her clients of the nature of the delay in processing their settlement checks issued for Accident 1 in 2003, and by failing to notify her clients of the dismissal of their civil suit in Accident 2, as stipulated in her ALD, Respondent willfully violated rule 3-500 of the Rules of Professional Conduct.

AUTHORITIES SUPPORTING DISCIPLINE

Standards For Attorney Sanctions For Professional Misconduct

Once the facts are established, this Court must first look to the Standards for guidance in determining the appropriate level of discipline. (See *In re Morse* (1995) 11 Cal. 4th 184; *In re Silvertown* (2005) 36 Cal.4th 81.)

Standard 2.4(b) states, “[c]ulpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

Standard 2.6 provides for suspension or disbarment for a violation of Business and Professions Code section 6068(l), depending on the gravity of the offense of harm, if any with due regard to the purposes of imposing discipline.

Although the Standards provide for range of discipline between suspension and disbarment, deviation from the Standards may be appropriate where the called for level of discipline is unduly harsh or compelling mitigation warrants a lesser sanction. (See *In re Young* (1989) 49 Cal.3d 257, 267-268; *In re Silvertown* (2005) 36 Cal.4th 81, 91.)

Case Law

In *In the Matter of Robert S. Hanson* (1994) 2 Cal. State Bar Ct. Rptr. 703, 715 the attorney was publicly reproofed for committing misconduct in a single client matter. The attorney’s misconduct

involved failing to promptly refund unearned fees to his clients and upon discharge by the clients, failing to take steps to avoid foreseeable prejudice to his clients. (See *id.*) In January 1990, the attorney's clients terminated the Respondent's employment and demanded an accounting and refund of unearned fees. (See *id.* at p. 708.) The attorney testified that in late February 1990, she sent the clients an accounting. (See *id.*) However, the clients denied ever receiving this letter. (See *id.*) In April 1991, after the intervention of the State Bar, the attorney finally refunded his clients the unearned fees plus interest. (See *id.*) The attorney also failed to respond to the opposing counsel's request for written verification that he was no longer representing his clients since his clients were trying to contact the opposing counsel. (See *id.*) The attorney had no mitigating circumstances and was privately reprovved in 1975. (See *id.* at p. 709.)

MITIGATING CIRCUMSTANCES

No Prior Record of Discipline

Respondent has no prior record of discipline since being admitted to the practice of law on August 31, 1995.

Respondent has demonstrated cooperation with the State Bar by entering into this stipulation.

(Do not write above this line.)

In the Matter of Irma Y. Avakian	Case number(s): 03-O-3650-DFM
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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 Fact, Conclusions of Law and Disposition.

12/6/07
Date


Respondent's Signature

Irma Y. Avakian
Print Name

12/10/07
Date


Respondent's Counsel Signature

Erica Tabachnick
Print Name

12-13-07
Date


Deputy Trial Counsel's Signature

Joy Chantarasompoth
Print Name

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In the Matter Of IRMA Y. AVAKIAN	Case Number(s): 03-O-03650-DFM
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

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 Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

12/20/07
Date


Judge of the State Bar Court
DONALD F. MILES

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 December 21, 2007, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING PRIVATE
REPROVAL**

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:

**ERICA ANN TABACHNICK
900 WILSHIRE BLVD #1000
LOS ANGELES, CA 90017**

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

JOY CHANTARASOMPOTH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 21, 2007**.



Tammy R. Cleaver
Case Administrator
State Bar Court