

ORIGINAL

PUBLIC MATTER

~~CONFIDENTIAL~~

(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT BROOKE A. SCHAFER 1149 South Hill Street, 9 th Floor Los Angeles, CA 90015-2299 Telephone: (213) 765-1000 Bar # 194824	Case Number(s) 03-O-05112-RAH; Inv. #: 01-O-03385; Inv. #: 01-O-04537; Inv. #: 01-O-04688; Inv. #: 02-O-10290; Inv. #: 02-O-13271; Inv. #: 03-O-00224; Inv. #: 03-O-02613; Inv. #: 04-O-10834; Inv. #: 04-O-11115; Inv. #: 04-O-11408; Inv. #: 04-O-11739 kwiktag® 078 540 823 	(for Court use) LODGED SEP 19 2005 STATE BAR COURT CLERK'S OFFICE LOS ANGELES FILED OCT 21 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per David A. Clare Attorney at Law 4675 MacArthur Ct., #1250 Newport Beach, California 92660 Telephone: (949) 417-5640 Bar # 44971	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of STEVEN M. KLUGMAN Bar # 53902 A Member of the State Bar of California (Respondent)		

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 December 14, 1972
(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 -17 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."

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- (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 _____
- (b) ☐ Date prior discipline effective _____
- (c) ☐ Rules of Professional Conduct/State Bar Action violations _____
- (d) ☐ Degree of prior discipline _____
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (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:

(Do not write above this line.)

In the Matter of STEVEN M. KLUGMAN	Case number(s): 03-O-05112-RAH; Inv. #: 01-O-03385; Inv. #: 01-O-04537; Inv. #: 01-O-04688; Inv. #: 02-O-10290; Inv. #: 02-O-13271; Inv. #: 03-O-00224; Inv. #: 03-O-02613; Inv. #: 04-O-10834; Inv. #: 04-O-11115; Inv. #: 04-O-11408; Inv. #: 04-O-11739
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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.

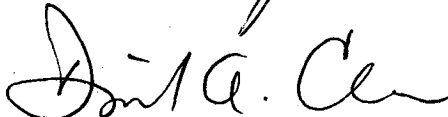
If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement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

5/18/05
Date


Respondent's signature

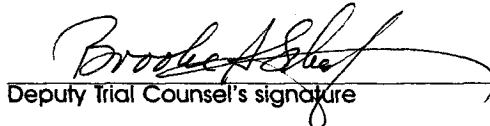
STEVEN M. KLUGMAN
Print name

5/16/05
Date


Respondent's Counsel's signature

DAVID A. CLARE
Print name

May 19, 2005
Date


Deputy Trial Counsel's signature

BROOKE A. SCHAFER
Print name

(Do not write above this line.)

In the Matter of STEVEN M. KLUGMAN	Case number(s): 03-O-05112-RAH; Inv. #: 01-O-03385; Inv. #: 02-O-13271; Inv. #: 04-O-11115; Inv. #: 01-O-04537; Inv. #: 03-O-00224; Inv. #: 04-O-11408; Inv. #: 01-O-04688; Inv. #: 03-O-02613; Inv. #: 04-O-11739 Inv. #: 02-O-10290; Inv. #: 04-O-10834;
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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.)

Date

see page 18 MDS

Judge of the State Bar Court

RICHARD A. HONN

ATTACHMENT TO PILOT PROGRAM STIPULATION

IN THE MATTER OF: STEVEN MARK KLUGMAN, no. 53902
03-O-05112-RAH

INVESTIGATION NUMBER(S): 01-O-03385; 01-O-04537; 01-O-04688; 02-O-10290;
02-O-13271; 03-O-00224; 03-O-02613; 04-O-10834;
04-O-11115; 04-O-11408; and 04-O-11739

I. 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.

Jurisdiction

STEVEN MARK KLUGMAN ("Respondent") was admitted to the practice of law in the State of California on December 14, 1972, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

General Discussion and Background

Respondent's professional problems began around 1995 when his wife suffered a sudden and catastrophic stroke. A series of personal problems followed that negatively impacted Respondent's life and kept him out of his law office for long periods of time. It was during this period that the bulk of the misconduct discussed herein took place. In some of the client matters discussed below these problems lead to Respondent's failure to properly supervise dishonest employees.

Immediately following her stroke Respondent's wife was on life support and stayed in intensive care for 70 days. At first she was not expected to live. Respondent spent most of his time at the hospital during this two month period assumed sole responsibility for caring for their two young children, then aged 18 months and 3 years. After she recovered somewhat Respondent spent the bulk of his time during the next year at the hospital during his wife's rehabilitation process. During this year Respondent lost the services of his long time secretary, and he had to hire another attorney to work in his office. At first this arrangement seemed to work well.

Following his wife's release from the hospital both she and he experienced depression and what was later diagnosed as post-traumatic stress syndrome. Respondent put off seeking professional help for some time, until he began treating with a psychologist in 1998. Unfortunately Respondent's marriage soon dissolved thereafter and his wife left him for another man. A contested dispute soon arose over custody of the children, which further drained Respondent emotionally and financially. As a result his depression worsened during this time.

Respondent's physical condition continued to deteriorate as a result of his emotional and psychological stress. He began to self-medicate with sleeping pills and prescription medication to alleviate his stress and depression. Moreover, following a back injury around this time (1998-1999) he began taking Vicodin on a regular basis as well as the other drugs. Respondent was diagnosed with severe acute depression after he began seeing a psychologist in late 1999.

Respondent moved his law office to Glendale in 1999. A long time client, Anatoly Boz, talked Respondent into letting him help run the law office. Respondent had known Boz for about 20 years and believed he could trust him.

Also around 1999 Respondent turned from drug user to addict, and started abusing alcohol as well. He could not fall asleep without the help of drugs. He was taking Ambien, Klonopin, Benadryl and alcohol in heavy doses just to fall asleep.

In 2001 his drug use lead to serious emotional problems and a heart attack. By this time Respondent had stopped supervising Boz and was often physically gone from the office. Among other things, Boz was bringing in clients to the firm, working up the cases and sometimes settling them without Respondent's knowledge. Boz's conduct lead to a number of the complaints below. To compound things, in some cases client files and computer records were taken by Boz, making it impossible to reconstruct certain matters.

Respondent closed his Glendale office and worked out of his home for part of 2001 and 2002. During this time Respondent made restitution to a number of clients and medical providers from his own money. Although Respondent filed bankruptcy in 2001, he did not list any clients as debtors and continued making restitution on a case-by-case basis.

Respondent's substance abuse grew worse. He entered a self-help program called Landmark Forum, a large group awareness training program that was a successor to "est." At Landmark, Respondent met a former attorney named William Thomas. Thomas had resigned from the State Bar with charges pending in 2000. Landmark encourages its participants to share intimate details of their lives, and holds as official tenets "well being, self-expression, accountability and integrity." Respondent and Thomas became friends, and Respondent ultimately hired Thomas as his new office manager in the Fall of 2002.

Thomas convinced Respondent to advertise in the Latino community. They hired a former employee of Thomas' named Guillermo as a legal assistant and translator.

Meanwhile Respondent's substance abuse problems continued and he relied more and more on Thomas to run the office. Because his health was poor he often did not come into the office and would spend up to 15 hours a day sleeping, sometimes in the office.

Respondent sought help from the State Bar's Lawyers' Assistance Program (LAP) in late 2002 although he believed he did not have a substance abuse problem but a problem with depression. After working with LAP for months Respondent recognized the extent of his substance abuse problem and was admitted to an in-patient treatment center for sedative detoxification. Since his admission to the treatment facility in 2003 Respondent has maintained sobriety.

Upon his return to his law office in the summer of 2003 he fired Thomas. When Thomas left he took client files as well as blank checks from the office general account and client trust account. Respondent reported Thomas to his bank. The bank investigated several check frauds and found that Respondent's checks had indeed been forged.

Case No. 03-O-05112 (Ramirez matter)

Facts – case no. 03-O-05112

1. Following an automobile accident in November 2002, Nora Ramirez sought an attorney to represent her in property and personal injury claims. She went to Respondent's office in late November 2002, and met with Guillermo, who signed her up as a client of Respondent's firm. Respondent's office referred her to a body shop for car repairs, and Ms. Ramirez treated with her own physician.

2. Several months went by, and Ms. Ramirez began receiving calls from the body shop seeking payment for her car repairs. During this time she tried several times to reach Respondent by telephone, as his office told her that she would not have to pay out-of-pocket for her car repairs. Each time she left a message seeking an update on her case. Respondent never returned her calls.

3. In December 2003, after more than a year and after Ms. Ramirez told Respondent she was contacting the State Bar. Someone at Respondent's office called her back and promised to have certain documents for her to review before Christmas 2003. Nevertheless, Respondent failed to send anything, and nobody from Respondent's office communicated with her after that one conversation.

4. Respondent explains that he at first did not realize he was representing Ms. Ramirez, since he believed her case was one of the cases Thomas had taken with him when he was fired. Ultimately however Respondent realized he had Ms. Ramirez's case, and at the time of this stipulation he represents her in a lawsuit which he filed on her behalf in late 2004.

Conclusions of Law - case no. 03-O-05112

– By failing to perform any work on Ms. Ramirez's civil matters in over a year, by effectively abandoning his client without making any effort to prevent prejudice to her case, by failing to communicate with his client, Respondent recklessly and repeatedly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Inv. No. 01-O-03385 (Avakyan matter)

Facts – inv. no. 01-O-03385

5. Prior to June 2000, Seryozah Avakyan had filed a petition for asylum to stay in the United States. His petition was denied, and he sought to appeal. Avakyan was referred to Respondent's office and he met with the office manager, Anatoly Boz, in June 2000. Respondent had hired Boz to handle immigration matters, among other work.

6. Boz told Avakyan it would cost \$3500.00 to pursue his immigration appeal. Avakyan paid \$2500.00 then, and the remaining \$1000.00 over the next few months. Boz signed up Avakyan as a client of Respondent's law firm.

7. An employee in Respondent's office filed a Notice of Appeal naming Avakyan as a *pro se* appellant in June 2000, after they had accepted the case. In April 2001, the United States Board of Immigration Appeals wrote to Respondent at his office address that Avakyan's appeal was still pending, but that he had failed to file a proper notice of appearance as attorney of record. Although this notification was received by Respondent's office, Respondent was not physically present for much of this time, and at no time did Respondent file a proper notice of appearance.

8. Avakyan's appeal brief was due on or before July 23, 2001. This due date was made known by written notice from the court to Respondent's office. Respondent, in absence of gross negligence, should have known of this due date. In late June 2001 The Board of Immigration Appeals notified Avakyan of this due date as well (as he had incorrectly been listed as "*pro se*"). Avakyan went to Respondent's office to investigate the status of his appeal. Boz told Avakyan not to worry, that his matter was being taken care of. At no time did Respondent meet Avakyan.

9. On July 18, 2001, Avakyan called Respondent's office to inquire about his appeal and was informed that Respondent had suffered a "heart attack" and would not be able to file the opening brief on time. Respondent's office prepared a letter for Avakyan's signature requesting a 21-day extension in which to file the brief. However, Respondent's office mailed this letter to the Los Angeles Immigration court rather than the proper address in Falls Church, Virginia. As a result, the court did not receive the request for extension of time and Avakyan's appellate brief was not filed by July 23, 2001.

10. Thinking he had a 20-day extension of time to file, Avakyan sought another attorney in place of Respondent on August 9, 2001, who filed an opening brief on August 10, 2001. Unfortunately, this brief was returned as untimely.

11. An investigation of Respondent's client file regarding Avakyan's matter showed that no work had been performed. Subsequent to August 2001, after additional motions to reconsider the appeal filed by Avakyan's new attorney, the Board of Immigration Appeals reinstated the appeal.

12. Due to a heart attack and a disc problem in his back, Respondent was physically not in the office for most of the summer 2001. As a result he was not aware of the goings on in his office, and was

not properly supervising his employees and his cases. Respondent's absence constituted gross negligence.

13. At no time did Respondent perform any work of value on Avakyan's case, nor has he refunded any of the \$3500.00 of the unearned fees.

Conclusions of Law – inv. no. 01-O-03385

– Through his gross negligence in failing to supervise office staff and by being absent for months without watching over his cases, Respondent failed to diligently pursue the Avakyan appeal with the Board of Immigration Appeals, and thereby recklessly failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

– By failing to refund any of the advanced fees despite having earned none of them, Respondent wilfully failed to refund promptly any part of a fee paid in advanced that has not been earned, in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Inv. No. 01-O-04537 (Rian-Buckler matter)

Facts – inv. no. 01-O-04537

14. Lora Jean Rian-Buckler ("Buckler") hired Respondent in April 1998 to represent her in a personal injury matter following an automobile accident. The case was to be handled on a contingency basis. Respondent filed a civil complaint on Buckler's behalf in Los Angeles County Superior Court in January 1999.

15. The court set a status conference in the civil case for August 23, 1999. Although Respondent had proper notice of this status conference he failed to appear when scheduled. As a result the court set an Order to Show Cause for September 27, 1999, as to why the civil case should not be dismissed for lack of service, and for his failure to appear. Respondent received proper notice of the September 27, 1999, OSC.

16. On September 27, 1999, Respondent sent another attorney to court in his stead, solely for purposes of getting another continuance of the OSC. The court continued the matter to November 30, 1999. Respondent did not ascertain from the appearance attorney what had happened at the September 27, 1999, hearing; as a result he did not find out about the November 30, 1999, court date.

17. Subsequent to the September 27, 1999, hearing on OSC, the defendant in Buckler's civil case was served. However, Respondent failed to file a Proof of Service with the court.

18. On November 30, 1999, neither Respondent nor defendant attorney appeared at the OSC. At that time the court dismissed Buckler's civil case with prejudice. The parties knew of the dismissal. Respondent reports that the defense attorney suggested that since the case was going to settle Respondent should forego seeking to set aside the dismissal in order to save costs, and concentrate instead on conducting discovery to ascertain the damages. The parties' attorneys continued to conduct discovery, including interrogatories and depositions, over the next few months.

19. Subsequent to conducting discovery, however, a different defense attorney took over the Buckler case for the insurer. The new defense attorney would not honor the oral agreement made by the first defense attorney, and insisted instead that since the case had been dismissed he would not agree to settle it.

20. After it became clear that the replacement defense attorney would not be settling Buckler's case, Respondent did not seek to set aside the court's dismissal, nor did he seek to enforce the reliance

placed on the first attorney's promise regarding setting aside the dismissal and settlement. Moreover, after August 2001, Buckler was unable to reach Respondent, as he closed his office and never informed Buckler of a new contact address or telephone number; therefore she was unable to locate her attorney.

21. Buckler hired another attorney, who successfully moved to set aside the 1999 dismissal. In June 2002 the court reinstated Buckler's case, after much briefing and two hearings.

Conclusions of law – inv. no. 01-O-04537

– By failing to ascertain the results of the September 27, 1999, OSC which he had covered by an appearance attorney, by failing to file a proof of service in the civil case, by failing to take steps to set aside the dismissal after settlement discussions broke down; and by moving without notifying his client how he could be reached, Respondent intentionally failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

Inv. No. 01-O-04688 (Kilimdgyan matter)

Facts - inv. no. 01-O-04688

22. Gevorg Kilimdgyan hired Respondent in March 2001 to set aside a default judgment that earlier had been entered in a personal injury case in which he was the defendant. Respondent agreed to represent Kilimdgyan and accepted \$2500.00 in advance fees.

23. On April 11, 2001, Respondent filed a Motion to Vacate Default Judgment, with memorandum of authorities and supporting declaration. Respondent did not appear at the hearing, even though the retainer agreement, drafted by Respondent, called for him to provide "legal services" for Kilimdgyan. The court denied the motion on its merits on May 3, 2001.

24. Respondent never notified his client that the Motion to Vacate Default Judgment was denied. Moreover, after April 2001 Respondent stopped returning Kilimdgyan's telephonic requests for status updates. In August 2001, Respondent moved from his office and failed to notify Kilimdgyan of his new address or telephone number. Kilimdgyan filed a Notice of Appeal in pro per in August 2001 without Respondent's assistance.

Conclusions of law – inv. no. 01-O-04688

– By failing to inform his client that the court had denied the motion or to discuss further options his client might have, by failing to respond to his client's requests for information, and by failing to notify his client of his new address or telephone number after he moved from his office, Respondent repeatedly failed to perform legal services with competence, in violation of Rules of Professions Conduct, rule 3-110(A).

Inv. No. 02-O-13271 (Chopurian/Avenessian matter)

Facts - inv. no. 02-O-13271

25. Gharndick Avenessian was injured in after being struck by an automobile in November 2000. Avenessian hired attorney Hagop Chopurian to handle his claim.

26. After approximately one year Avenessian changed attorneys, choosing Respondent to handle his civil claim in January 2001. Avenessian and Respondent entered into a contingency fee contract whereby Respondent was to get 25% of any recovery.

27. Chopurian, Medicare and Avenessian's medical provider had liens on any recovery. Respondent was aware of these liens.

28. In early April 2001 Avenessian's claim was settled with 21st Century Insurance Co. for \$30,000.00. 21st Century mailed a check in the amount of \$30,000.00 to Respondent – it was payable to Respondent, Avenessian and Medicare. On April 6, 2001, Respondent endorsed the settlement draft and deposited it into his Client Trust Account at Bank of America.

29. After subtracting his 25%, Respondent was supposed to maintain a balance of \$22,500.00 in his Client Trust Account, until distributed to Avenessian or third parties on his behalf pursuant to liens. Instead, Respondent's Client Trust Account fell to \$6550.00 on May 30, 2001, was only \$19,720.00 on June 26, 2001, and fell to a low of \$4340.00 in July 2001. At no time between April 6 and July 31, 2001, had Respondent made any disbursements to Avenessian or to third parties on his client's behalf.

30. On April 9, 2001, Respondent or someone at his direction issued a check from his Client Trust Account, made out to Avenessian in the amount of \$4980.00. This check was never delivered to Avenessian, was not endorsed by Avenessian, and was cashed at a check cashing service. Moreover, there was no indication given by Respondent, through an accounting or otherwise, as to how this amount was determined. Respondent believes his employee Boz took this money.

31. As of early April 2001 Avenessian's medical provider was claiming \$4320.00 for his services. Between July and October 2001 the medical provider telephoned Respondent's office several times in an attempt to collect on his medical lien. Respondent was responsible for determining the amount of any lien claimed by the medical provider or by Medicare.

32. To date, Respondent has not disbursed any of the \$22,500.00 to Avenessian or to anyone on his behalf.

Conclusions of law – inv. no. 02-O-13271

– By failing to maintain Avenessian's settlement funds in trust, Respondent wilfully failed to maintain client funds in violation of Rules of Professional Conduct, rule 4-100(A).

– By misappropriating approximately \$18,000.00, Respondent committed acts involving moral turpitude, in wilful violation of Business and Professions Code section 6106.

– By doing nothing after April 6, 2001, to properly distribute settlement money, ascertain final lien amounts, or provide an accounting of client money, Respondent intentionally failed to perform services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

Inv. No. 02-O-10290 (Mehzun matter)

Facts - inv. no. 02-O-10290

33. Semmera Mehzun hired Respondent in June 2000 to represent her in a personal injury matter. Respondent was to get 40% of any settlement, plus costs.

34. In August 2000 the matter settled for \$25,000.00. Respondent provided an accounting breaking down alleged fees which included: Client's share: \$4640.00; Medical providers: \$7430.75; Private Investigator: \$2375.85. Respondent represented to Mehzun that these amounts would be paid to the respective parties once the settlement breakdown was approved.

35. Mehzun approved the settlement breakdown based on these representations and on August 11, 2000, received a check for \$4640.00, with the notation "partial settlement." Mehzun never received any more money from this settlement.

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36. In reality, the private investigator on the case was paid only \$1000.00, well under the amount claimed by Respondent.

37. Additionally, after August 31, 2000, there should have remained in Respondent's Client Trust Account at least \$6226.75 to cover two unpaid medical liens. However, this balance was not maintained. On September 20, 2000, the balance dropped to \$2131.22. By January 11, 2001, the balance was only \$25.80, with the two medical liens still unpaid.

38. Mehzun's medical providers sought payment from Mehzun after Respondent failed to pay them out of the settlement money. This ultimately lead to lawsuits and an adverse credit history for Mehzun.

39. In 2004 Mehzun and Respondent settled the outstanding financial aspects of this dispute.

Conclusions of law – inv. no. 02-O-10290

– By failing to properly account for Mehzun's settlement proceeds, by failing to provide a final accounting and by failing to follow through on medical lien payments, Respondent intentionally failed to perform legal services with competence, in violation of Rules of Professional Conduct, rule 3-110(A).

– By misrepresenting that the private investigator's services were \$2373.85 when the bill was in fact only \$1000.00, by misrepresenting that upon approval the medical lienholders would be paid, and by misappropriating approximately \$7575.00, Respondent wilfully violated Business and Professions Code, section 6106, by committing acts involving moral turpitude and dishonesty.

– By failing to maintain approximately \$7600.00 in his client trust account for the benefit of Mehzun, Respondent failed to maintain funds belonging to clients in a bank account labeled "trust account," "client's funds account" or words of similar import, in wilful violation of Rules of Professional Conduct, rule 4-100(A).

Inv. No. 03-O-00224 (Rule 1-311 matter)

Facts - inv. no. 03-O-00224

40. Respondent hired William H. Thomas to act as his office manager in the Fall of 2002. Respondent had known Thomas since that summer, and was aware that Thomas was a former attorney who had resigned with charges pending in September 2000.

41. Thomas worked for Respondent for several months, until the Spring of 2003. At no time did Respondent notify the State Bar that he was employing a resigned attorney, as he is required to do under Rules of Professional Conduct, rule 1-311(D). At no time did Respondent notify the State Bar that Thomas had terminated employment, as he is required to do under Rules of Professional Conduct, rule 1-311(F).

Conclusions of Law – inv. no. 03-O-00224

– By not providing written notice to the State Bar as to Thomas's employment, Respondent failed to serve upon the California State Bar written notice of the employment of a person who had resigned with charges pending from the State Bar of California, in wilful violation of Rules of Professional Conduct, rule 1-311(D).

– By not providing prompt written notice to the State Bar regarding Respondent's termination of the employment of Thomas, Respondent failed to promptly serve upon the California State Bar written notice of the termination of employment of a person who resigned with charges pending from the State Bar of California, in wilful violation of Rules of Professional Conduct, rule 1-311(F).

Inv. No. 03-O-02613 (Sanchez matter)

Facts - inv. no. 03-O-02613

42. In 1996 Israel Sanchez hired Respondent to represent him in a civil action for personal injuries sustained when Sanchez was a minor and attending Bethany Christian Academy (the "first lawsuit").

43. In 1998 Sanchez hired Respondent to represent him in a personal injury claim following injuries sustained in an auto accident. (The "second lawsuit").

44. The first lawsuit headed to trial in October 2000. Respondent was emotionally too ill to take this case to trial, and so he arranged for another attorney to try the case. On the second day of trial the first lawsuit settled for a total of \$21,500.00. The money came into Respondent's office but was never disbursed to Sanchez or anyone on his behalf.

45. In April 2001 Sanchez learned from the carrier insuring the driver involved in the auto accident that the second lawsuit had settled for \$10,000.00.

46. After April 2001, Sanchez lost all communication with Respondent. Respondent would no longer return telephone messages left with his secretary and on his voice mail. In addition, when Respondent relocated his office from Glendale to Los Angeles Sanchez was not informed of the changed address.

47. At no time has Respondent paid Sanchez, or anyone on behalf of Sanchez, any part of the \$31,500.00 settlement money in the two lawsuits. Respondent has misappropriated the entire amount of the settlement.

Conclusions of law – inv. no. 03-O-02613

– By failing to properly account for the settlement money in the two lawsuits, by failing to provide Sanchez with his balance of the settlement funds, by failing to return Sanchez's telephone calls and requests for information after April 2001, by moving his office without informing Sanchez, and by effectively misappropriating the entire amount of settlement, Respondent wilfully failed to perform services with competence in violation of Rules of Professional Conduct, rule 3-110(A).

– By misappropriating the entire \$31,500.00 Sanchez was paid in settlement of the two lawsuits, Respondent wilfully committed acts involving moral turpitude and dishonesty, in violation of Business and Professions Code section 6106.

Inv. no. 04-O-11739 (Ivan investigation)

48. In April 2001 Ivan Vaschenko, Jessica Rosales and Daria Alekseyeva were injured in a car accident when the car in which they were riding was struck by an uninsured motorist. The car in which they were driving was owned by Ivan's mother, Tamara Vaschenko. In May 2001 the three passengers hired Respondent, through Respondent's agent, to represent them for their personal injury claims. Tamara Vaschenko also agreed to let Respondent represent her interests with respect to a property damage claim for damage to her vehicle.

49. Between July 2001 and January 2002 Ivan Vaschenko contacted Respondent's office on numerous occasions to learn the status of his case. Each time he called he would leave a message for Respondent. Respondent never returned any of Ivan's messages.

50. In August 2001 Respondent's office received a check in the amount of \$1130.90 from Vesta Fire Insurance for property damage to Tamara Vaschenko's vehicle. This check was sent to Respondent

and Ms. Vaschenko was never notified of its existence.

51. In September 2001 Vesta Fire Insurance issued drafts for the personal injury claims in the following amounts: for Ivan Vaschenko, \$4500.00; for Daria Alekseyeva, \$4000.00; for Jessica Rosales, \$4500.00. Respondent never notified any of these payees of the settlement checks.

52. At no time did Ivan Vaschenko, Jessica Rosales or Daria Alekseyeva approve of their respective settlement amounts, nor did any of them know of the settlement offers beforehand. Respondent, or someone acting with authority in his office, settled each of their claims without authority. As such Respondent is not entitled to retain any of the money as his fee.

53. At no time did Respondent pay out anything to Ivan Vaschenko, Jessica Rosales or Daria Alekseyeva. Respondent effectively misappropriated all of their money. Moreover, Respondent, or someone at his direction, forged each of the client's names to the settlement drafts.

54. The first time Ivan learned of settlement funds being paid out was in October 2003, when an agent of the insurer contacted him.

55. Respondent has never notified Tamara Vaschenko of the receipt of settlement money, nor has he paid any of the proceeds to her.

56. Respondent reports that these cases were brought into the office by Boz during a time when he was for all intents absent from the office and not participating in the practice of law. In essence, he simply allowed his agents to run the office for him, for reasons outlined in the general background section above. Nevertheless, Respondent understands he is responsible for the misconduct committed by his agents as if he had committed it personally.

Conclusions of Law – inv. no. 04-O-11739

– By settling his clients' claims without authority, by forging each of their names to the settlement drafts and by misappropriating client funds, Respondent violated Business and Professions Code, section 6106, by wilfully committing acts involving moral turpitude and dishonesty.

– By not notifying any of his clients of the receipt of settlement money, by not staying in contact with his clients and by not promptly paying out any of the settlement money to his clients, Respondent failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

Inv. no. 04-O-11115 (Melendez investigation)

57. In March 2003 Alvaro Melendez hired Respondent's office through Guillermo to represent him in a personal injury matter for injuries received in an accident earlier that month. The matter was taken as a contingency fee case. Guillermo sent Melendez to treat with a physical therapist approximately thirty times, at Dr. Victor Navarro's office in Los Angeles. Respondent was personally unaware that the matter had come into the office, as he was ill and not present for most of the relevant times (see above).

58. For the first few months Guillermo would tell Melendez that his case was proceeding normally and well. After approximately six months Respondent's office stopped returning Melendez's calls seeking a status update.

59. After late 2003 Melendez heard nothing more from Respondent nor anyone at his office. Melendez was simply abandoned without further communication.

60. Melendez filed a complaint with the State Bar in March 2004, stating that he has not heard from Respondent in months and has no idea of the status of his claim.

61. Subsequently State Bar investigators learned that Melendez's own insurance carrier determined that he was at fault for the accident and had paid the other driver for property damage in August 2003. The matter had since been closed.

62. Respondent at no time told Melendez that his claim had been closed, or that Respondent would no longer be working on his case.

Conclusion of law – inv. no. 04-O-11115

– By failing to notify Respondent that his case was being closed due to his being determined to have been at fault for the accident and by failing to return his messages after approximately late 2003, Respondent failed to communicate significant developments in the case to a client, in wilful violation of Rules of Professional Conduct, rule 3-500.

Inv. no. 04-O-11408 (Castillo)

63. Ernesto Castillo hired Respondent in September 2002 to represent him in a personal injury claim following an accident earlier that month. Castillo went to Respondent's office and retained Respondent through an agent named Guillermo. Castillo never in fact met Respondent prior to the misconduct described herein. In October 2002. Respondent's office made a demand from the other party's insurer, AAA Insurance, to settle Castillo's claim.

64. In January 2003, AAA agreed to settle for \$7200.00. AAA issued a check in that amount, made payable jointly to Castillo and Respondent. Included with the settlement check was a release which Respondent was to have his client sign and return to AAA. Respondent's agent, Guillermo, deposited the \$7200.00 into Respondent's client trust account. Castillo, however, was never notified of the settlement, never approved the settlement and was not aware any money had come in on his behalf.

65. At no time did Respondent nor any agent of Respondent pay Castillo any of the settlement money, nor did he provide an accounting of the proceeds. Due to Respondent's complete abandonment of his practice to Guillermo and other agents, Respondent or his agent effectively misappropriated the entire \$7200.00 settlement.

66. Castillo incurred a \$3911.00 medical bill to Dr. Henry Kessler that remains unpaid, despite a lien on any recovery.

67. Castillo found out that AAA had sent a settlement draft to Respondent later in 2003, when he hired new counsel.

68. Castillo's new attorney was assured by Respondent personally that he was responsible for the money and that he would pay Castillo the settlement funds due him. At no time, however, has Respondent made any payment to Castillo.

69. Because the \$7200.00 was improperly obtained, Respondent should disgorge the entire amount to Castillo and he is not entitled to any of it.

Conclusions of law – inv. no. 04-O-11408

– By abandoning his practice so completely that his agent(s) was able to take in, handle and settle the Castillo case without client authority, by misappropriating all of Castillo's settlement money, and by not paying any money to Castillo despite assurances to do so, Respondent wilfully violated

Business and Professions Code, section 6106, by wilfully committing acts involving moral turpitude and dishonesty.

Inv. No. 04-O-10834 (Olmos)

70. In November 2002 Steven Olmos was involved in a vehicle accident, causing him injury. Later that month he hired Respondent through an agency called Los Defensores to represent him in a personal injury suit against the owner of the truck that struck him. Respondent accepted the case on a contingency basis and had Mr. Olmos treat with a chiropractor for several months for his injuries. Mr. Olmos also received MRIs from Diagnostic Imaging Network, which held a medical lien on any recovery.

71. From time to time over the next year Mr. Olmos would inquire from Respondent's office as to the status of his case. Each time Olmos would be assured that his case was progressing. Mr. Olmos never met Respondent in person and never went to his office.

72. In late December 2003 Olmos received a call from Respondent's office, telling him that Respondent had settled his case but that he had taken Olmos' settlement funds. Olmos never received copies of anything regarding his claim, and does not know whether the matter was ever filed or who the insurer, if any, was. Olmos has no information regarding the settlement amount, and has never received an accounting from Respondent's office.

73. Diagnostic Imaging Network won a small claims action against Respondent in the amount of \$3600.00 for services provided to Olmos after Respondent failed to honor the medical lien. To date this has not been paid.

74. Due to Respondent's absence from his office, he allowed others to run legal matters, including the Olmos matter. Respondent's absence amounted to gross negligence.

Conclusions of law - inv. no. 04-O-10834

- By his gross negligence in allowing others to run his law practice, including his agent(s)' settling Olmos' case without authority and misappropriating Olmos' settlement money, Respondent committed acts involving dishonesty amounting to moral turpitude, in wilful violation of Business and Professions Code section 6106.

- By failing to communicate important events involving Olmos' case in that there had been a settlement offer and then the receipt of settlement funds, Respondent failed to communicate a significant event, in wilful violation of Business and Professions Code section 6068(m).

II. RULE 133 NOTICE:

Respondent was notified by writing dated and mailed May 2, 2005, of any matters not included in this stipulation.

III. RESTITUTION AND WAIVERS re CONFIDENTIALITY RELATED THERETO

Waivers re Confidentiality and Restitution Efforts

The parties agree that it is appropriate, given the intent of the Pilot Program, that restitution be paid as soon as practicable. Respondent understands and agrees that the State Bar Client Security Fund ("CSF") can, in some cases, pay restitution in these matters, with the Respondent then responsible for reimbursing CSF for any such amounts it has paid. Respondent acknowledges that to the extent CSF has

paid only principal amounts he will still be liable for interest payments to the claimants where appropriate. In order that CSF can pay the claimants at an early date, however, it is necessary that Respondent partially waive confidentiality to effectuate those purposes. By entering into this stipulation Respondent makes the following express waivers, pursuant to Rule of Procedure 805.

- Respondent expressly waives any objection to immediate payment by the State Bar's Client Security Fund upon a claim(s) for the principal amounts of restitution as set forth in the Stipulation re: Facts and Conclusions of Law.

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

Restitution Schedule

As a condition of her Pilot Program compliance in this matter, Respondent shall pay the following restitution to the following persons (and/or the Client Security Fund, if appropriate) in the following amounts plus 10 percent interest per annum accruing from the dates indicated. To the extent Respondent has paid any restitution prior to the effective date of the order arising from this stipulation he shall be given credit for such payments provided satisfactory proof is shown to the Probation Unit of the State Bar:

- (1) Seryozah Avakyan. \$3500.00 plus interest from January 1, 2001.
- (3) Gevorg Kilimdgyan. Respondent did do some work for Mr. Kilimdgyan. However, as he may not have earned the full \$2500.00, Respondent agrees to write to this former client within 30 days of the date of entry into the Program, and in that writing to agree to participate in fee arbitration should Mr. Kilimdgyan choose it. Respondent agrees that he will not raise any statute of limitations defense to a fee arbitration proceeding.
- (4) Gharndick Avenessian. \$22,500.00 plus interest from May 1, 2001.
- (5) Israel Sanchez. \$31,500.00 plus interest from May 1, 2001.
- (6) Tamara Vaschenko, \$1130.90 plus interest from January 1, 2002.
- (7) Ivan Vaschenko, \$4500.00 plus interest from January 1, 2002.
- (8) Daria Alekseyeva, \$4000.00 plus interest from January 1, 2002.
- (9) Jessica Rosales, \$4500.00 plus interest from January 1, 2002.
- (10) Ernesto Castilio, \$7200.00 plus interest from March 1, 2003.
- (12) Diagnostic Imaging Networks (Olmos matter), \$3600.00

//// end of attachment ////

(Do not write above this line.)

In the Matter of STEVEN M. KLUGMAN	Case number(s): 03 O 05112 RAH ET AL
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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 Hearing dates are vacated.

1. On page 16 the heading "Restitution and Waivers re Confidentiality Related Thereto" should be deleted.
2. On pages 16-17 the language under the heading "waivers re Confidentiality and Restitution Efforts" should be deleted.
3. On page 17 under "Restitution Schedule, " line one, "As a condition of her Pilot Program compliance in this matter," should be deleted.

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(d), Rules of Procedure.)

Date

9/19/05


RICHARD A. HONN
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 21, 2005, I deposited a true copy of the following document(s):

STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW;

ORDER;

**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:


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

**DAVID ALAN CLARE
ATTORNEY AT LAW
4675 MACARTHUR CT #1250
NEWPORT BEACH, CA 92660**

- ☒ 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 **September 21, 2005.**


Milagro del R. Salmeron
Case Administrator
State Bar Court

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

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

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Supervising Attorney Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 21, 2005.**



Milagro del R. Salmeron

Case Administrator

State Bar Court