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### State Bar Court of California

Hearing Department  Los Angeles  San Francisco

Counsel for the State Bar  
MICHAEL J. GLASS  
1149 S. HILL STREET  
LOS ANGELES, CA 90015-2299

Bar # 102700

Case number(s)  
04-C-12553

(for Court's use)

# PUBLIC MATTER

## FILED

AUG 29 2005

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

Counsel for Respondent  
 In Pro Per, Respondent  
MARK E. MONTPAS  
605 S. PACIFIC AVE.  
#201  
SAN PEDRO, CA 90731

Bar # 93365



Submitted to  assigned judge  settlement judge

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND  
DISPOSITION AND ORDER APPROVING

In the Matter of  
MARK E. MONTPAS

Bar # 93365

### ACTUAL SUSPENSION

A Member of the State Bar of California  
(Respondent)

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 October 31, 1980  
(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 11 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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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.

(Do not write above this line.)

(8) 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:  
2006, 2007 and 2008  
(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

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.

(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.

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- (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 "Additional Mitigating Circumstances" on page 9 of the Attachment.

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of two (2) 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 as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following: \_\_\_\_\_
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Calif. Rules of Ct.)

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**(3)  Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days
- 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 as set forth in the Financial Conditions form attached to this stipulation.
  - 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 must 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 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.

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- (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)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** 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 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) & (c), Rules of Procedure.
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: \_\_\_\_\_
- (5)  **Other Conditions:**

ATTACHMENT TO  
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
IN THE MATTER OF MARK E. MONTPAS

CASE NUMBER 04-C-12553

**FACTS AND CONCLUSIONS**

Respondent Mark E. Montpas ("Respondent") admits the following facts are true and that he is culpable of violation of the Business and Professions Code.

**Case No. 04-C-12553**

1. On or about December 15, 2004, in the Los Angeles County Superior Court, Case Number BA261045, Respondent pled nolo contendere and was convicted of a violation of Penal Code section 484(a) (Theft of Property), one count, a misdemeanor which involves moral turpitude.

2. In the underlying matter, on or about September 13, 2000, Respondent was appointed by the Los Angeles County Superior Court, as the defense Attorney for his client, Defendant Michael Schwartz, in the matter of The People of the State of California vs. Michael Schwartz, Los Angeles County Superior Court Case No. NA045563. On or about June 13, 2001, Respondent submitted a declaration regarding attorney fees, under penalty of perjury, to the Los Angeles County Superior Court, stating that Respondent had interviewed his client, Michael Schwartz, on several occasions at County Facilities. Respondent was unable to substantiate those interviews. After Respondent submitted the declaration regarding attorney fees to the County of Los Angeles, on or about June 13, 2001, the County of Los Angeles paid Respondent Attorneys Fees of \$1,920 for the alleged several visits with client Michael Schwartz.

3. On or about December 15, 2004, in the Los Angeles County Superior Court, Case Number BA261045, Respondent was sentenced to one (1) year summary probation with conditions, including, the payment of a \$100 fine, payment of \$1,970 in restitution to the Los Angeles County Superior Court, payment of a \$200 fine and penalty assessment, the completion of 25 hours of community service, and the voluntary abstention from the practice of law from December 15, 2004, through June 1, 2005. As of June 1, 2005, Respondent had paid the \$100 fine, paid \$1,970 in Restitution to the Los Angeles County Superior Court, paid the \$200 fine and penalty assessment, completed the 25 hours of community service, and completed the voluntary abstention from the practice of law from December 15, 2004, through June 1, 2005.

4. On or about March 17, 2005, in State Bar Court Case No. 04-C-12553, the Review Department of the State Bar Court issued its order declining the imposition of an interim suspension as to Respondent based on good cause, including Respondent's agreed abstention from the practice of law between December 15, 2004, and June 1, 2005, incident to Respondent's conviction.

**Conclusions of Law**

By being convicted of a violation of Penal Code section 484(a) (Theft of Property), a misdemeanor, Respondent committed an act involving moral turpitude, dishonesty or corruption in violation of Business and Professions Code section 6106.

## **PENDING PROCEEDINGS**

The disclosure date referred to on page one, paragraph A.(7) was July 21, 2005.

## **COST OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 21, 2005, the estimated prosecution costs in this matter are approximately \$1,636.00. Respondent acknowledges that this figure is an estimate only and it does not include State Bar costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

The parties stipulate that the costs are to be paid in three equal amounts, one third being added to and becoming a part of the membership fees for each of the years 2006, 2007, and 2008.

## **AUTHORITIES SUPPORTING DISCIPLINE**

Standard 3.2 provides that "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances."

However, the courts have deviated from the standards in appropriate cases. In *Chadwick v. State Bar* (1989) 49 Cal. 3d 103, the Attorney pled guilty to a misdemeanor violation of 15 U.S.C. sections 78n(e), 78FF, and 17 C.F.R. section 240.14e-3 in that he made an illegal purchase or sale of securities subject to an undisclosed tender offer. The attorney paid a fine with no period of incarceration and disgorged his profits of \$57,000. The court imposed discipline consisting of a 5 year stayed suspension, 5 years probation, including a 1 year actual suspension. In mitigation, the court found that the Attorney had no prior discipline since his admission to the Bar in 1973, was remorseful and recognized his wrongful conduct, had cooperated with the Securities and Exchange Commission and the State Bar during their investigations, a considerable period of time has passed since his misconduct in 1982, and a significant number of character witnesses had testified to the Attorney's honesty and integrity.

## **AGGRAVATING CIRCUMSTANCES**

Under Standard 1.2(b)(iii) 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, as Respondent was appointed by the Los Angeles County Superior Court as the Attorney for Defendant Michael Schwartz in a criminal matter, submitted a false declaration to the County of Los Angeles for Attorneys Fees in the amount of \$1,920, and was paid the sum of \$1,920 in Attorneys Fees from the County of Los Angeles based on the false declaration.

Under Standard 1.2(b)(iv), Respondent's misconduct significantly harmed a client, the public or the administration of justice because Respondent was appointed by the Los Angeles County Superior Court as the Attorney for Defendant Michael Schwartz in a criminal matter, submitted a false declaration to the County of Los Angeles for Attorneys Fees in the amount of \$1,920, and was paid the sum of \$1,920 in Attorneys Fees from the County of Los Angeles based on the false declaration.

## **MITIGATING CIRCUMSTANCES**

Under Standard 1.2(e)(i), Respondent has no prior record of discipline since his admission to the State Bar of California on October 31, 1980 (i.e. no prior discipline over 24 years of practice).

Under Standard 1.2(e)(v), Respondent displayed spontaneous candor and cooperation to the victims of his misconduct and to the State Bar during disciplinary investigation and proceedings. In this regard, on December 15, 2004, Respondent pled nolo contendere to the charges against him. Further, on or about January 11, 2005, Respondent sent correspondence to the State Bar in which Respondent voluntarily informed the State Bar of his December 15, 2004 conviction.

## **ADDITIONAL MITIGATING CIRCUMSTANCES**

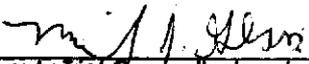
On December 15, 2004, Respondent was sentenced to one year summary probation with regard to his conviction. As of June 1, 2005, as part of the one year summary probation, Respondent has paid the \$100 fine, paid \$1,970 in Restitution to the Los Angeles County Superior Court, paid the \$200 fine and penalty assessment, completed the 25 hours of community service, and completed the voluntary abstention from the practice of law from December 15, 2004, through June 1, 2005.

(Do not write above this line.)

In the Matter of  MARK E. MONTPAS	Case number(s):  04-C-12553
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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, Conclusions of Law and Disposition.

<u>August 19, 2005</u> Date	 Respondent's signature	<u>MARK E. MONTPAS</u> Print name
_____ Date	_____ Respondent's Counsel's signature	_____ Print name
<u>8/23/05</u> Date	 Deputy Trial Counsel's signature	<u>Michael J. Glass</u> Print name

(Do not write above this line.)

In the Matter of  MARK E. MONTPAS	Case number(s):  04-C-12553
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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 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.
- All Hearing dates 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. (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

8/29/05

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 August 29, 2005, I deposited a true copy of the following document(s):

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

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

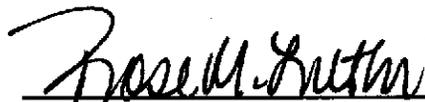
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MARK E MONTPAS  
605 S PACIFIC AVE #201  
SAN PEDRO CA 90731**

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

**MICHAEL GLASS, ESQ., Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 29, 2005**.



\_\_\_\_\_  
**Rose M. Luthi**  
Case Administrator  
State Bar Court