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State Bar Court of California Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar Cydney Batchelor Deputy Trial Counsel 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204 Bar # 114637	Case Number(s) 04-0-10156-PEM 04-0-13227 04-0-15145 04-0-15425 05-0-00597 06-0-11170	(for Court use) CONFIDENTIAL FILED <i>llc</i> AUG 31 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per Scott S. Furstman, Esq. 1541 The Alameda San Jose, CA 95126 Tele: 408/292-4132 Bar # 76476	PUBLIC MATTER	
In the Matter of SCOTT S. FURSTMAN Bar # 76476 A Member of the State Bar of California (Respondent)	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
CONFIDENTIAL LODGED OCT 31 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO		

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 12/21/1977
(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 10 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
See attached
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
See attached

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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 ~~of a similar nature to his misconduct~~ See attached
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

None

(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.
See attached
- (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.
See attached
- (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.
See attached
- (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.
See attached
- (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 attached

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **SCOTT S. FURSTMAN**
CASE NUMBERS: **04-O-10156-PEM, et al.**

FACTS AND CONCLUSIONS OF LAW.

State Bar Case No. 04-O-10156 (Douglas L. Cramer)

Facts: In July 2002, Douglas L. Cramer employed respondent to file a motion for new trial and prosecute an appeal in a federal criminal matter. As payment for respondent's legal services, Mr. Cramer transferred a motorcycle to him. In December 2002, respondent filed an appeal on Mr. Cramer's behalf. Thereafter, the appellate court ordered that docketing fees be paid by February 26, 2003, that the court transcript be filed by March 31, 2003, and that the Mr. Cramer's opening brief on appeal be filed by May 9, 2003. Respondent received actual notice of the orders. Thereafter, respondent paid the docketing fees. However, he failed to file the court transcript, file the opening brief, or properly withdraw from representation, despite multiple orders from the appellate court which were filed from February 2003 to November 2003. During that period of time, and until April 2004, respondent also failed to respond to numerous requests for status information from Mr. Cramer. Finally, on April 23, 2004, the district court ordered new counsel appointed to represent Mr. Cramer. Respondent thereafter cooperated with subsequent counsel, including providing new counsel with the appellate brief which he had prepared but not filed on Mr. Cramer's behalf.

Conclusions of Law: By repeatedly failing to prosecute Mr. Cramer's appeal as he was employed to do, respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Prof. Conduct 3-110(A). By willfully failing to obey numerous district court orders that he perform certain actions in Mr. Cramer's case, respondent failed to comply with court orders, in violation of Bus. and Prof. Code section 6103. By willfully failing to communicate with Mr. Cramer between February 2003 until April 2004, respondent failed to communicate adequately with his client, in violation of Bus. and Prof. Code section 6068(m).

State Bar Case No. 04-O-13227 (Lawrence Jou)

Facts: In August 2003, Lawrence Jou employed respondent to prosecute an appeal in a federal criminal case, and paid him \$10,000.00 in advanced legal fees. Respondent

performed legal research on the appeal and prepared the opening brief, which was due on November 3, 2002. He prepared the opening brief; however, he failed timely to file the brief on Mr. Jou's behalf, despite two orders from the appellate court filed on December 15, 2003 and January 16, 2004. On February 27, 2004, respondent finally filed an application for relief from default, and a request to file a late opening brief and excerpts of record. However, at Mr. Jou's two requests, the district court removed respondent as counsel on March 5, 2004.

Conclusions of Law: By repeatedly failing to file the opening brief on Mr. Jou's behalf, respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Prof. Conduct 3-110(A). By willfully failing to obey two court orders that he file the opening brief by dates certain, respondent failed to comply with court orders, in violation of Bus. and Prof. Code section 6103.

State Bar Case No. 04-O-15145 (State Bar Investigation)

Facts: In February 2002, Frances D. Ward employed respondent to prosecute a criminal appeal. The underlying criminal trial was six weeks in length; however Ms. Ward never paid for the trial transcripts necessary to prosecute the appeal, nor did she ever pay respondent any attorney fees. On February 2, 2002, respondent filed the appeal on her behalf. On February 11, 2002, the district court ordered respondent to pay the docketing fees, file the court transcript and file the opening appellate brief by dates certain. Respondent received actual notice of the order; however, he failed to comply. Although he had determined that he would not represent Ms. Ward because of non-payment, respondent failed to file a motion to withdraw in a timely manner, and was subsequently sanctioned numerous times by the court for his failure to file the opening brief. Finally, at respondent's request, he was relieved as counsel on December 15, 2003.

Conclusions of Law: By willfully withdrawing from representing Ms. Ward in the appeal without obtaining the court's leave to do so in a timely manner, respondent withdrew from employment in a proceeding before a tribunal without obtaining its permission, in violation of Rule of Professional Conduct 3-700(A)(2). By willfully failing to obey numerous court orders that he file the appellate brief by dates certain, respondent failed to comply with court orders, in violation of Bus. and Prof. Code section 6103.

State Bar Case No. 04-O-15425 (State Bar Investigation)

Facts: Respondent represented Alexander Morales in a criminal trial matter, and Mr. Morales was convicted of criminal charges. In order to preserve Mr. Morales' right to appeal, respondent filed an appeal on his behalf in 2004. Thereafter, Mr. Morales decided that he did not wish to pursue an appeal. However, respondent failed to dismiss the appeal, or to request the appellate court's leave to withdraw from the case. On March 15, 2004, the appellate court ordered that the reporter's transcript be designated; respondent had actual notice of the order, but failed to comply. On May 14, 2004, respondent was sanctioned \$500.00 by the court.

Conclusions of Law: By willfully failing to request that the Morales appeal be dismissed, or otherwise seek the appellate court's leave to withdraw, respondent withdrew from employment in a proceeding before a tribunal without obtaining its permission, in violation of Rule of Professional Conduct 3-700(A)(2). By willfully failing to obey a court order that he designate the transcript by a date certain, respondent failed to comply with a court order, in violation of Bus. and Prof. Code section 6103.

State Bar Case No. 05-O-597 (Bong Yul Shin)

Facts: In September 2004, Bong Yul Shin ("Yul Shin") employed respondent to represent his brother Bong Chal Shin ("Chal Shin") in withdrawing a guilty plea to avoid Chal Shin's deportation. Yul Shin paid respondent \$5,000.00 as advanced attorney fees. Respondent was involved in a trial during the entire month of October 2004, and Chal Shin was deported to Korea in November 2004. Thereafter, Chal Shin and his immigration attorney made several demands for the returned of unearned fees, to no avail. In addition, Yul Shin employed another attorney to contact respondent about the matter; in a conversation with that attorney, respondent said that he would return the advanced fees to Yul Shin, but he failed ever to do so.

Conclusions of Law: By willfully failing to return unearned attorney fees to Yul Shin, respondent failed to perform unearned fees to his client, in violation of Rule of Prof. Misconduct 3-700(D)(2).

State Bar Case No. 06-O-11170 (Tooraj Shahedi)

Facts: In April 2002, Tooraj Shahedi employed respondent to represent him in a legal malpractice action, on a contingency fee basis. Thereafter, respondent filed and served a civil complaint on Mr. Shahedi's behalf. However, during the period from February to August 2004, respondent failed to respond appropriately and timely to discovery propounded to Mr. Shahedi. In addition, during the same time period, respondent also failed to respond sufficiently to numerous requests for status updates from Mr. Shahedi. However, in representing Mr. Shahedi, respondent attended every court appearance, and responded appropriately and aggressively on the pleadings, tried the case to a decision in a bench trial, and filed a motion for a new trial and a motion for reconsideration of the judgment. In addition, respondent obtained a \$5000.00 judgment in favor of his client, and waived his attorney fees and costs from Mr. Shahedi's recovery.

Conclusions of Law: By repeatedly failing to respond in a timely and complete manner to discovery propounded to Mr. Shahedi during the period February 2004 to August 2004, respondent failed to perform competently the legal services for which he was employed, in violation of Rule of Prof. Conduct 3-110(A). By willfully failing to respond sufficiently to Mr. Shahedi's requests for status updates on his case during the same time period, respondent failed to communicate adequately with his client, in violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was August 2, 2006.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances:

Multiple Acts of Misconduct: The facts stipulated to herein multiple acts of misconduct to multiple clients.

MITIGATING CIRCUMSTANCES.

Facts Supporting Mitigating Circumstance:

Candor and Cooperation: Through counsel, Respondent has been candid and cooperative with the State Bar in resolving this matter.

Financial, Emotional, and Family problems: In the mid-1990's, respondent's wife needed to move the family from southern to northern California. Respondent moved his family, but between 1996 and 2004, was unable to find another legal position in northern California and continued to work in southern California and commute back and forth between the family home and his law practice. This caused severe financial and emotional distress. In addition, respondent's elderly mother developed dementia, his sister was diagnosed with cancer, and his father passed away during this time.

ADDITIONAL MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although the misconduct stipulated to herein is serious, it should be noted that Respondent had been admitted to practice for 10 years at the time of the misconduct, with no prior record of discipline.

Cramer case: payment of sanctions and return of motorcycle: Although he did not do so until after the intervention of the State Bar, on June 14, 2004, respondent paid the \$500.00 sanctions were ordered on May 14, 2004. On June 14, 2004, he also returned the motorcycle which Mr. Cramer had transferred to him for attorney fees.

Ward case: payment of sanctions: Although he did not do so until after the intervention of the State Bar, respondent paid the sanctions ordered by the court in full by mid-June 2005.

SBI case no. 04-O-15425: Although he did not do so until after the intervention of the State Bar, respondent paid the sanctions ordered by the court in full in January 2005.

Bong and Jou cases: As a further demonstration of his remorse and good faith, respondent has agreed to refund the advanced attorney fees in full.

Shahedi case: In this case, respondent also waived all his attorney fees and costs from his client's recovery.

Participation in Lawyer's Assistance Program. On December 3, 2004, Respondent contacted the State Bar Lawyer Assistance Program ("LAP") and completed the intake process. Respondent was then assessed and monitored for a period of time by the LAP. At the conclusion of the process, Respondent entered into a long-term participation plan with LAP on April 6, 2005.

RESTITUTION.

Respondent waives any objection to immediate payment by the State Bar Client Security Fund upon a claim or claims for the principal amounts of restitution set forth below.

In accordance with the timetable set forth in the State Bar Court alternative discipline program contract to be executed between the State Bar Court and respondent on the captioned cases, Respondent must make restitution as follows:

Lawrence Jou, or the Client Security Fund if it has paid, in the principal amount of \$10,000.00, plus interest at the rate of 10% per annum from April 1, 2004, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

Bong Abl Shin, or the Client Security Fund if it has paid, in the principal amount of \$5,000.00, plus interest at the rate of 10% per annum from January 1, 2005, until paid in full and furnish satisfactory evidence of restitution to the State Bar Court.

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SIGNATURE OF THE PARTIES

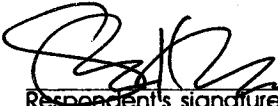
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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.

Aug. 7, 2006
Date


Respondent's signature

SCOTT S. FURSTMAN
Print name

Date

Respondent's Counsel's signature

Print name

8/7/06
Date


Deputy Trial Counsel's signature

CYDNEY BATCHELOR
Print name

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In the Matter of SCOTT S. FURSTMAN	Case number(s): 04-0-10156-PEM, 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 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.)

October 31, 2006
Date

Pat McElroy
Judge of the State Bar Court