



ORIGINAL

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar <b>ERIC H. HSU</b> DEPUTY TRIAL COUNSEL 1149 S. Hill Street Los Angeles, CA 90015-2299 213-765-1247  Bar # 213039	Case number(s) 04-0-12160-PEM  <p style="text-align: center;"><b>NOT FOR PUBLICATION</b></p>	(for Court's use)  <p style="text-align: center;"><b>PUBLIC MATTER</b></p> <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;">JUL 21 2005</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent <b>ERICA TABACHNICK, ESQ.</b> 900 Wilshire Blvd., #1000 Los Angeles, CA 90017 213-895-4640  Bar # 94324	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>REPROVAL</b> <input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> PUBLIC  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of <b>SUSAN A. MITCHELL</b>  Bar # 158640  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 June 8, 1992  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) 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.

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- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- (a)  costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - (b)  case ineligible for costs (private reproof)
  - (c)  costs to be paid in equal amounts for the following membership years:  
\_\_\_\_\_ (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - (e)  costs entirely waived

(9) The parties understand that:

- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

- (1)  Prior record of discipline [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case \_\_\_\_\_
  - (b)  Date prior discipline effective \_\_\_\_\_
  - (c)  Rules of Professional Conduct/ State Bar Act violations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - (d)  Degree of prior discipline \_\_\_\_\_

(Do not write above this line.)

- (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.
- (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.

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- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:** NONE

(Do not write above this line.)

**D. Discipline:**

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

or

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

**E. Conditions Attached to Reproof:**

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

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

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. 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 required to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- No MPRE ordered. Reason: No Suspension is recommended
- (11)  The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions                        |

F. Other Conditions Negotiated by the Parties: None

(Do not write above this line.)

In the Matter of SUSAN A. MITCHELL	Case Number(s): 04-0-12160-PEM
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### Law Office Management Conditions

- a.  Within \_\_\_ days/ \_\_\_ months/ \_\_\_ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within ~~\_\_\_~~ days/ 12 months ~~\_\_\_~~ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 6 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ONE year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:       SUSAN A. MITCHELL

CASE NUMBER:           04-O-12160-PEM

**FACTS AND CONCLUSIONS OF LAW.**

Respondent SUSAN A. MITCHELL ("Respondent") admits that the following facts are true, and that she is culpable of violating rule 3-110(A) of the California Rules of Professional Conduct and California Business and Professions Code section 6068, subdivision (i), as set forth below. By this stipulation, the parties hereby waive any variance in the evidence that relates to the noticed charges.

a. Facts.

1. Respondent was admitted to the practice of law in the State of California on June 8, 1992, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California ("State Bar").

2. Respondent was employed by Richard Arrata ("Arrata") on November 12, 2003, to modify child support after dissolution of marriage ("the child support case"). On that date, Arrata paid \$1,500 to Respondent as advance fees and costs.

3. On January 20, 2004, Respondent's assistant Diane Murphy ("Murphy") suffered a brain aneurysm and was put on disability and unable to work until December 2, 2004. During Murphy's absence, Respondent relied on temporary office staffs for assistance.

4. On April 21, 2004, the State Bar opened an investigation, case number 04-O-12160, based on Arrata's complaint against Respondent relating to the status of the child support case.

5. Although Respondent had finalized the application for an Order to Show Cause and the income and expense documents necessary to commence the child support case on November 20, 2003, that application was not filed until May 4, 2004. A hearing on the Order to Show Cause ("the OSC hearing") in the child support case was initially set for June 7, 2004.



6. On June 4, 2004, opposing counsel Joel Beckman brought an ex parte motion to continue the June 7, 2004 OSC hearing to August 5, 2004, so that discovery may be conducted in the child support case. The superior court granted that motion and continued the OSC hearing to August 5, 2004.

7. In June 2004, Respondent moved her law office from Santa Fe Springs, California, to Huntington Beach, California.

8. On July 30, 2004, a State Bar investigator wrote to Respondent regarding the Arrata matter. That letter requested Respondent to provide to the State Bar a written response to specified allegations of misconduct relating to the Arrata matter. Respondent received that July 30, 2004 letter, but she did not provide a written response to the State Bar or otherwise communicate with the investigator.

9. On August 3, 2004, the August 5, 2004 OSC hearing was further continued to October 18, 2004, due to issues concerning discovery. Formal notice of this continuance was served on August 10, 2004, and filed on August 11, 2004.

10. At all times pertinent to these charges, no one from Respondent's office had informed Arrata about the August 5, 2004 OSC hearing being continued to October 18, 2004.

11. On August 5, 2004, Arrata went to the superior court, not knowing that the August 5, 2004 hearing had been continued. Thereupon, Arrata telephoned Respondent's office and requested for a full refund of the \$1,500 he had paid to Respondent.

12. On August 11, 2004, Respondent signed a Substitution of Attorney in the child support case, and Arrata picked up his file from Respondent.

13. On August 26, 2004, the State Bar investigator wrote to Respondent, again, regarding the Arrata matter and requested Respondent's written response. Respondent received that August 26, 2004 letter, but she did not provide a written response to the State Bar or otherwise communicate with the investigator.

14. On September 30, 2004, Respondent instructed Murphy to refund \$1,500 to Arrata. In or about October 2004, Arrata received that \$1,500 refund from Respondent's office.

15. At all times pertinent to these charges, Respondent did not request an extension of time for her to respond to the State Bar investigation relating to the Arrata matter.

b. Conclusions of Law.

- A. By failing to properly supervise the work of non-attorney employees so that Arrata could be timely informed about the continuance of the August 5, 2004 OSC hearing, Respondent failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.
- B. By not providing a written response to the Arrata complaint or otherwise cooperating in the State Bar investigation of the Arrata matter, Respondent failed to cooperate in a disciplinary investigation, in willful violation of California Business and Professions Code section 6068, subdivision (i).

**DISMISSALS.**

The parties respectfully request this court to dismiss the following allegation in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
04-O-12160	Two	Business and Professions Code section 6106;
04-O-12160	Three	Business and Professions Code section 6068, subdivision (m); and
04-O-12160	Four	Rule 3-700(D)(2) of the Rules of Professional Conduct.

**AUTHORITIES SUPPORTING DISCIPLINE.**

a. Standards.

Standard 2.4(b) provides that, where a willful failure to perform services involves an individual matter or matters not amounting to a pattern, the discipline shall be reproof or suspension, depending on the gravity of the harm and the extent of such misconduct.

Standard 2.6(a) provides that a violation of Business and Professions Code section 6068 shall result in disbarment or suspension, depending on the gravity of the offense or harm to any victim, with due regard to the purposes set forth in standard 1.3.

b. Case Law.

The absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time. (*In re Young* (1989) 49 Cal.3d 257, 269: Young had been in practice for 20 years.)

*In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175. The Review Department recommended private reproof with condition, for the attorney's misconduct in a single client matter involving his repeated failure to inform the client about inheritance taxes owed to the state. There was no aggravation. In mitigation, the attorney had no prior record of discipline, demonstrated candor and cooperation, and improved his office procedures to prevent recurrence of the misconduct.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, at paragraph A(7), was June 27, 2005.

(Do not write above this line.)

In the Matter of SUSAN A. MITCHELL	Case number(s): 04-0-12160-PEM
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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.

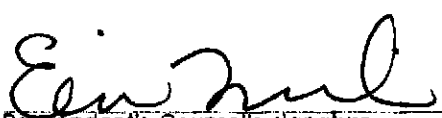
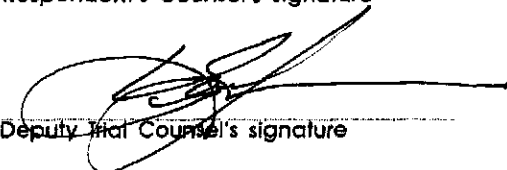
<u>7-11-05</u> Date	<u><i>Susan A Mitchell</i></u> Respondent's signature	<u>SUSAN A. MITCHELL</u> Print name
_____ Date	_____ Respondent's Counsel's signature	<u>ERICA TABACHNICH, ESQ.</u> Print name
_____ Date	_____ Deputy Trial Counsel's signature	<u>ERIC H. HSU</u> Print name

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In the Matter of  SUSAN A. MITCHELL	Case number(s):  04-0-12160-PEM
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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.

Date	Respondent's signature	<u>SUSAN A. MITCHELL</u> Print name
<u>7/13/05</u>	 Respondent's Counsel's signature	<u>ERICA TABACHNICK, ESQ.</u> Print name
<u>July 15, 2005</u>	 Deputy Trial Counsel's signature	<u>ERIC H. HSU</u> Print name

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In the Matter of  SUSAN A. MITCHELL	Case number(s):  04-0-12160-PEM
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## ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- 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. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

July 18, 2005  
Date

[Signature]  
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. 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 San Francisco, on July 21, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING, filed July 21, 2005**

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

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

**ERICA ANN TABACHNICK  
A LAW CORPORATION  
900 WILSHIRE BLVD #1000  
LOS ANGELES CA 90017**

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

**ERIC HSU, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 21, 2005**.

  
**George Hue**  
Case Administrator  
State Bar Court