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State Bar Court of California

Hearing Department

Los Angeles

PUBLIC MATTER

Counsel For The State Bar Bitu Shasty Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299	Case Number (s) 04-O-13994, 05-O-01685, 05-O-04955	(for Court's use)
Bar # 225177		FILED DEC 10 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent James R. DiFrank 12227 Philadelphia Street Whittier, California 90601-3931		
Bar # 105591	Submitted to: Settlement Judge	
In the Matter Of: STEVEN PAUL NIETO	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
Bar # 80474	STAYED SUSPENSION; NO ACTUAL SUSPENSION	
A Member of the State Bar of California (Respondent)	<input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 23, 1978**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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):
- costs added to membership fee for calendar year following effective date of discipline.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **Three billing cycles following the effective date of the Supreme Court Order.**
(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 **00-O-11960, 00-O-13846**
 - (b) Date prior discipline effective **October 20, 2002**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **4-100(A), 4-100(B)(4), 3-110(A), 6068(m), 3-700(D)(1), 3-700(D)(2)**
 - (d) Degree of prior discipline **90 days stayed suspension**
 - (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.
- (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

D. Discipline:

- (1) **Stayed Suspension:**

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- (a) Respondent must be suspended from the practice of law for a period of **1 Year**.
- 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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **2 Years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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.
- (6) 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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- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) 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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

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ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: STEVEN PAUL NIETO

CASE NUMBER(S): 04-O-13994, 05-O-01685, 05-O-04955

FACTS AND CONCLUSIONS OF LAW.

Respondent Steven Paul Nieto ("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.

FACTS

1. In or about May 1996, Scott Mauritzen, ("Mauritzen"), Betty Stalons ("Stalons") (also known as Betty Winslow), and her son Scott Winslow ("Winslow"), employed Respondent to represent them in a claim for personal injuries sustained in an automobile accident that occurred on or about April 14, 1996. Respondent agreed to represent them on a contingency fee basis.

2. On or about April 14, 1997, Respondent filed a complaint on behalf of Mauritzen, Stalons and Winslow in Los Angeles County Superior Court entitled *Betty Winslow, Scott Winslow and Scott Mauritzen v. Justine Leshner and Pamela Leshner*, case no. 97C01158 ("auto accident case").

3. On or about September 28, 1999, Respondent settled the auto accident case for the amounts of \$1,500 for Mauritzen, \$1,000 for Stalons, and \$500 for Winslow with their consent.

4. On or about September 28, 1999, the attorney for the defendants in the auto accident case sent to Respondent releases to be executed by Mauritzen, Stalons and Winslow. Respondent received the three releases.

5. In or about early 2000, Respondent sent the releases to Mauritzen, Stalons and Winslow.

6. From in or about February 2000 through in or about July 2004, Mauritzen left approximately fifteen to twenty messages with Respondent's office inquiring about the status of the settlement funds from the auto accident case and requested that Respondent return the calls. Respondent received the messages. Respondent did not return the calls.

6

Page #

SPN JAO

7. At the time of the automobile accident, Stalons was the driver of the vehicle, and Mauritzen and Winslow were passengers. Therefore, they had potentially conflicting interests.

8. At no time did Respondent obtain Mauritzen, Stalons, or Winslow's written consent to represent each of them in this matter.

CONCLUSIONS OF LAW:

9. By failing to respond to Mauritzen's telephone calls, Respondent failed to respond to a client's reasonable status inquiries, in wilful violation of Business and Professions Code, section 6068(m).

10. By failing to obtain Mauritzen, Stalons, or Winslow's written consent to represent each of them in this matter, Respondent accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client in wilful violation of Rules of Professional Conduct, rule 3-310(C)(1).

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

The parties waive any variance between the Notice of Disciplinary Charges filed on July 17, 2008, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 31, 2008.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
04-O-13994	1	Rules of Professional Conduct, rule 3-100(A)

7

Page #

SN *AND*

04-O-13994	3	Rules of Professional Conduct, rule 3-700(D)(1)
04-O-13994	4	Business and Professions Code, section 6068(m)
05-O-01685	6	Business and Professions Code, section 6068(i)
05-O-04955	7	Business and Professions Code, section 6068(i)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 31, 2008, the costs in this matter are \$3,800.78 . 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated that unless it has “grave doubts as to the propriety of the recommended discipline,” it will uphold the application of the standards. *In re Silvertown* (2005) 36 Cal. 4th 81, 91-92.

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

Standard 2.10 provides that a violation of any provision or rule of the Business and Professions Code or Rules of Professional Conduct “not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.”

8

Page #


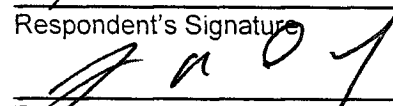
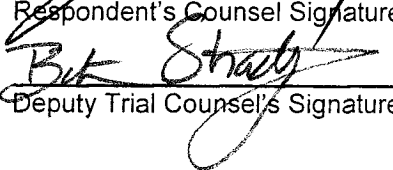
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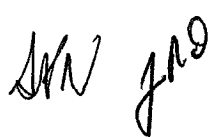
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In the Matter of STEVEN PAUL NIETO (No. 80474)	Case number(s): 04-O-13994, 05-O-01685, 05-O-04955
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SIGNATURE OF THE PARTIES

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

<u>11-24-08</u> Date	 Respondent's Signature	<u>STEVEN PAUL NIETO</u> Print Name
<u>11/24/08</u> Date	 Respondent's Counsel Signature	<u>JAMES R. DIFRANK</u> Print Name
<u>11/24/08</u> Date	 Deputy Trial Counsel's Signature	<u>BITA SHASTY</u> Print Name



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In the Matter Of STEVEN PAUL NIETO (No. 80474)	Case Number(s): 04-O-13994, 05-O-01685, 05-O-04955
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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 9.18(a), California Rules of Court.)**

12-3-08
Date



Judge of the State Bar Court
RICHARD A. HONN

SN *gao*

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 10, 2008, 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:

JAMES RICHARD DIFRANK, ESQ.
12227 PHILADELPHIA ST
WHITTIER, CA 90601 - 3931

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

BITA SHASTY, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 10, 2008.



Rose Luthi
Case Administrator
State Bar Court