



ORIGINAL

PUBLIC MATTER

(Do not write above this line)

State Bar Court of California

Hearing Department  Los Angeles  San Francisco
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Form with fields for Counsel for the State Bar (OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT CHARLES A. MURRAY), Case Number(s) (04-O-14833, 04-O-15267), Counsel for Respondent (MICHAEL J. SCHUNK), and In the Matter of (MICHAEL JOHANN SCHUNK). Includes stamps: FILED, DEC 22 2006, LODGED, NOV 21 2006.

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 29, 2000
(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition...
(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation...
(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See Attachment
(5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law." See Attachment

(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior Record of Discipline [see standard 1.2(f)]**
  - (a)  State Bar Court Case # of prior case \_\_\_\_\_
  - (b)  Date prior discipline effective \_\_\_\_\_
  - (c)  Rules of Professional Conduct/State Bar Action violations \_\_\_\_\_
  - (d)  Degree of prior discipline \_\_\_\_\_
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances are involved.**

**Additional aggravating circumstances:**

(Do not write above this line.)

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**C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat of force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:**

**ATTACHMENT TO ADP STIPULATION**  
**RE FACTS & CONCLUSIONS OF LAW**

IN THE MATTER OF:       **MICHAEL J. SCHUNK, State Bar No. 212138**

CASE NUMBER:            04-O-14833 & 04-O-15267

**PENDING PROCEEDINGS.**

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

**PARTIES ARE BOUND BY THE STIPULATED FACTS:**

The parties intend to be and are hereby bound by the stipulated facts contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law ~~and/or stipulated disposition~~<sup>ADP</sup> set forth herein are rejected, modified or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

**STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that ~~h~~e is culpable of violations of the specified statues and/or Rules of Professional Conduct, or that ~~h~~e has otherwise committed acts of misconduct warranting discipline, as follows:

**FACTS:**

1. On June 12, 2002, the Office of Certification of the State Bar of California sent Respondent a 60-day Notice of Non-Compliance with Minimum Continuing Legal Education requirements at his State Bar membership records address, and informed Respondent that if he failed to provide adequate proof of compliance with the minimum continuing legal education requirement by August 30, 2002, he would be enrolled as an inactive member of the State Bar and would not be permitted to practice law until such time as adequate proof of compliance was received by the State Bar.

2. On September 16, 2002, the Office of Certification of the State Bar of California sent Respondent a MCLE Non-Compliance Notice of Enrollment on Not Entitled Status to Respondent's State Bar membership records address notifying him that he had been enrolled on Not Entitled Status effective September 3, 2002 and was not eligible to practice law as of that date.

3. On or about April 2, 2004, Respondent forwarded his MCLE compliance materials and payment of all outstanding MCLE non-compliance fees to the Office of Certification of the State Bar of California.

4. On May 23, 2003, the Office of Membership Billing Services of the State Bar of California sent Respondent a Final Delinquent Notice that his continued failure to pay his State Bar membership fees would result in his suspension from the practice of law to Respondent's membership records address. The Notice stated that the effective date of this suspension was expected to be September 16, 2003.

5. On August 28, 2003, the Supreme Court of California ordered that Respondent be suspended from the practice of law due to nonpayment of fees under the State Bar Act in Order Number S118232, which Order was served on Respondent at his State Bar membership records address. Also, on August 28, 2003, the Office of Membership Billing Services of the State Bar of California sent Respondent Notice of Entry of Order of Suspension for Nonpayment of Fees to his State Bar membership records address, to take effect on September 16, 2003.

6. On or about April 5, 2004, Respondent forwarded his State Bar membership fees for the years of 2003 and 2004 to Membership Billing Services of the State Bar of California.

7. From September 3, 2002 to April 6, 2004, Respondent knew that he was enrolled on Not Entitled Status for failure to comply with the MCLE requirements, and was not eligible to practice law.

8. From September 16, 2003 to April 6, 2004, Respondent knew that he was suspended from the State Bar of California for failure to pay his State Bar membership fees.

**Case No. 04-O-14833**

**FACTS:**

9. In January, 2004, Paul Fraga ("Fraga") met by telephone with Respondent and discussed his legal options with respect to a breach of contract action. Fraga then employed Respondent to represent him in a breach of contract action. That day, Fraga paid Respondent \$500 in advanced attorney fees and agreed to a 20% contingency fee.

10. On January 8, 2004, Fraga signed what Respondent entitled, "Attorney Engagement Letter." This letter provided that Respondent was engaged to undertake legal representation with respect to certain business matters, namely: research legal issues, undertake all necessary measures to obtain legal reimbursement for Fraga's losses and advise Fraga regarding any subsequent actions which may become necessary. The Attorney Engagement Letter is signed by Respondent as Attorney at Law.

11. At this time that Fraga employed Respondent, Respondent knew that he had not paid his annual State Bar dues for the year 2003 and that he had not complied with the MCLE requirement of 2002. Accordingly, Respondent knew that he was not entitled to practice law due to the failure to pay his annual Bar dues for 2003 and the failure to comply with the MCLE requirement of 2002.

12. At the time Respondent and Fraga entered into an agreement for Respondent to represent Fraga, Respondent represented to Fraga that he could provide legal counsel and services in the matter for which Fraga had retained him.

**CONCLUSIONS OF LAW:**

13. By advising Fraga of his legal options, accepting employment as an attorney on behalf of Fraga, accepting advanced attorney fees from Fraga, and signing the Attorney Engagement Letter as Attorney at Law on January 8, 2004, while he was suspended from the practice of law, Respondent held himself out as practicing or entitled to practice law and practiced law when he was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126 and thereby failed to support the laws of the State of California in violation of Business and Professions Code section 6068(a).

14. By wilfully misrepresenting to Fraga that he could provide him legal counsel and services when he knew that he was suspended from the practice of law, Respondent committed an act or acts involving moral turpitude, dishonesty and/or corruption in violation of Business and Professions Code, section 6106.

Case No. 04-O-15267

**FACTS:**

15. Paragraphs 1 through 8 pertaining to Respondent's suspension from the practice of law, which are discussed above as they pertain to Case No. 04-O-14833, are also incorporated herein.

16. In November 2003, Daniel Masarsky ("Masarsky") employed Respondent to defend him in a driving under the influence case entitled *People of the State of California v. Daniel Masarsky*, San Diego Superior Court Case No. M901486. Masarsky paid Respondent \$500 in advanced attorney fees.

17. Respondent made court appearances on behalf of Masarsky, gave Masarsky legal advice and handled Masarsky's plea and subsequent restitution proceedings in the driving under the influence case while he knew he was suspended from the practice of law.

18. At no time did Respondent inform Masarsky that he was actually not entitled to practice law effective September 3, 2002, and not entitled to practice law on the day that Masarsky employed him.

**CONCLUSIONS OF LAW:**

19. By advising Masarsky of his legal options, accepting employment as an attorney on behalf of Masarsky, by making court appearances on behalf of Masarsky, and accepting advanced attorney fees from Masarsky, while he was suspended from the practice of law,

Respondent held himself out as practicing or entitled to practice law and practiced law when he was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126 and thereby failed to support the laws of the State of California in *wilful* violation of Business and Professions Code section 6068(a).

20. By wilfully misrepresenting his status with the State Bar of California to Masarsky, Respondent committed an act or acts involving moral turpitude, dishonesty and/or corruption in violation of Business and Professions Code, section 6106.

**Restitution:**

Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee listed below. If the Client Security Fund ("CSF") has reimbursed the payee for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF of the amount(s) paid, plus applicable interest and costs.

<b>Payee</b>	<b>Principal Amount</b>	<b>Interest Accrues From at 10% per annum.</b>
Paul Fraga	\$500.00	January 8, 2004
Daniel Masursky	\$500.00	November 1, 2003

(Do not write above this line.)

In the Matter of  MICHAEL JOHANN SCHUNK Member # 212138	Case number(s):  04-O-14833 04-O-15267
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### SIGNATURE OF THE PARTIES

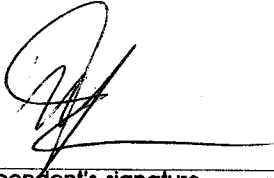
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

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.

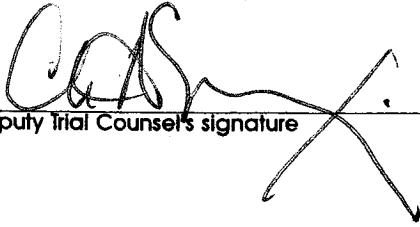
If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement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

7/14/06  
Date

  
Respondent's signature

MICHAEL JOHANN SCHUNK  
Print name

\_\_\_\_\_  
Date

  
Deputy Trial Counsel's signature

CHARLES A. MURRAY  
Print name



(Do not write above this line.)

In the Matter of  MICHAEL JOHANN SCHUNK Member # 212138	Case number(s):  04-O-14833 04-O-15267
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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.)

Nov - 21, 2006  
Date

  
\_\_\_\_\_  
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 November 21, 2006, I served a true copy of the following document(s):

**ORDER**

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS**

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S  
ALTERNATIVE DISCIPLINE PROGRAM**

**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

by personally delivering such documents to the following individuals at 1149 S. Hill St. Los Angeles Ca 90015:

**CHARLES MURRAY**

**MICHAEL J. SCHUNK**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **November 21, 2006.**



**Johnnie Lee Smith**  
Case Administrator  
State Bar Court

cc: Probation Dept  
LAP

**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 22, 2010, I deposited a true copy of the following document(s):

**DECISION AND ORDER SEALING CERTAIN DOCUMENTS  
STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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

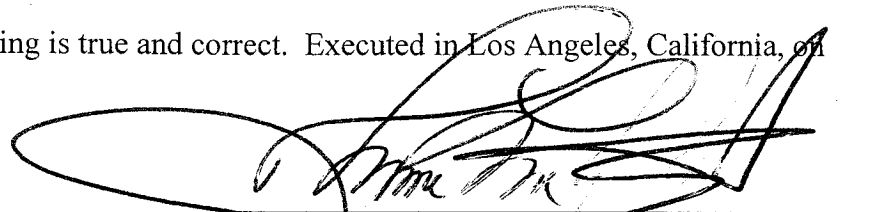
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL J. SCHUNK  
LAW OFC MICHAEL J SCHUNK  
420 K ST #210  
SAN DIEGO, CA 92101 - 6930

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 22, 2010.



Johnnie Lee Smith  
Case Administrator  
State Bar Court