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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 Anthony Garcia Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 Telephone (213) 765-1089  Bar # 171419	Case number(s) 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)	(for Court's use)  <div style="text-align: center;"> <b>FILED</b>  <i>MDS</i>  <b>MAY - 9 2006</b>  <b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b> </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent  James B. Markum 71703 Estellita Drive Rancho Mirage, CA 92270  Bar # 170326	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of James B. Markum  Bar # 170326 A Member of the State Bar of California (Respondent)	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>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <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 2, 1994  
(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 16 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
  - (b) ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:  
3 billing cycles following the effective date of the Supreme Court Order.  
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)
  - (c) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - (d) ☐ 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.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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) ☐ **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.

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- (10) ☐ **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.
- (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.

- (a) ☐ Respondent must be suspended from the practice of law for a period of one (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 three (3) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

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**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 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 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 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.
- (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 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:

☒ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☐ Financial Conditions

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**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 951(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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In the Matter of  James B. Markum	Case Number(s): 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)
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### Substance Abuse Conditions

- a. ☐ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.

- b. ☒ Respondent must attend at least 2 meetings per month of:

☒ Alcoholics Anonymous

☐ Narcotics Anonymous

☐ The Other Bar

☐ Other program \_\_\_\_\_

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. ☐ Respondent must select a licensed medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☐ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to respondent that the Office of Probation requires an additional screening report.
- e. ☐ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

(Substance Abuse Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004.)

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In the Matter of James B. Markum	Case Number(s): 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)
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## Financial Conditions

### a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) 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.

Payee	Principal Amount	Interest Accrues From
Sue Newton	\$2500.00	12/20/04
Lyle Crow	\$5000.00	12/20/04
Kristen DiValentin	\$10000.00	12/20/04
Issa Ballat	\$5000.00	12/20/04
Linda Boruff	\$2500.00	12/20/04

- ☒ Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than 3 years of the effective date of the Supreme Court and Order Approving this Discipline.

### b. Installment Restitution Payments

- ☒ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
As described	\$569.00	monthly
	\$100.00 each to Newton, Crow, Ballat & Boruff	
	\$169.00 to DiValentin	
	after Ballat is paid \$269.00 to DiValentin, after each successive client is paid their share of payment to DiValentin.	

### c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";



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In the Matter of James B. Markum	Case Number(s): 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)
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b. Respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

**ATTACHMENT TO STIPULATION**  
**RE: FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        JAMES BRIAN MARKUM

CASE NUMBERS:            04-0-15325, 04-0-15843, 05-0-00396, 05-0-00459  
                                  (Including unfiled cases: 05-O-4049, 06-O-10683)

**A. FACTS AND CONCLUSIONS OF LAW**

**Facts**

**Preliminary Facts**

Beginning in about February 2004, Respondent began to have medical problems. In about October 2004, Respondent was very sick and sought medical assistance. He learned in about November 2004, that he had a bacterial infection that was resistant to antibiotic treatment.

Respondent had also undergone emotional problems that caused him to start drinking and eventually led him to self-admit himself into a residential treatment center on December 17, 2004.

Before entering the treatment center Respondent gave Betty Wilmot, his acting secretary, a list of his active clients and their files and asked her to send a letter to the clients. On about December 20, 2004, Ms. Wilmot notified the Respondent's clients of his illness, that he entered a rehabilitation program and told the clients where they may obtain their files.

Sue Newton, discussed below, was not on the list that Respondent gave to Ms. Wilmot, but Ms. Wilmot received a letter that Ms. Newton had sent to Respondent on about December 31, 2004. Ms. Wilmot then sent the above-detailed letter to Ms. Newton and helped her recover her file.

**The Newton matter, Case No. 04-0-15325**

Sue Newton hired Respondent in April 2003, to represent her in a wrongful termination action. Newton paid Respondent \$2,500 to handle her wrongful termination action.

Between April 2003, and June 2004, Respondent had several conversations with Newton. In June 2004, Respondent told Newton that her lawsuit would be filed in within seven business days.

On August 26, 2004, Newton sent a letter to Respondent complaining about her employer. She gave Respondent her phone numbers and asked him to call her. Respondent never contacted Newton again before he entered the residential treatment center.

Respondent performed only preliminary services for Newton and those services were of no value to her, as a result Respondent owes Newton the entire \$2,500 that she paid him. Respondent has not refunded any of Newton's unearned fees.

### **Conclusions of Law**

By not filing Newton's lawsuit, Respondent wilfully failed to perform legal services with competence in violation of Rules Professional Conduct, rule 3-110(A).

By not promptly refunding the advanced fees that Newton paid Respondent, he failed to refund unearned fees in violation of Rules Professional Conduct, rule 3-700(D)(2).

### **Facts**

#### **The Crowe matter**

Lyle Crowe hired Respondent in March 2004, to represent him in a demand for vacation pay that Crowe thought was owed to him by his employer. Crowe paid Respondent \$750 to write a demand letter to his employer. Respondent sent the demand letter to Crowe's employer. Crowe's employer responded by denying liability.

On May 26, 2005, Crowe hired Respondent to initiate litigation against Crowe's employer. Crowe paid Respondent \$5,000 as an advance fee. Respondent prepared a draft complaint, Crowe reviewed it and signed the complaint and paid Respondent \$297.50 for filing fees. Respondent never filed the complaint.

Respondent performed only preliminary services for Crowe and those services were of no value to him, as a result Respondent owes Crowe the entire \$5,000 that he paid him. Respondent has not refunded any of Crowe's unearned fees.

### **Conclusions of Law**

By not filing Crowe's complaint, Respondent wilfully failed to perform legal services with competence in violation of Rules Professional Conduct, rule 3-110(A).

By not promptly refunding the advanced fees that Crowe paid Respondent, he failed to refund unearned fees in violation of Rules Professional Conduct, rule 3-700(D)(2).

### **Facts**

#### **The DiValentin matter**

Kristen DiValentin hired Respondent in June 2003, to represent him in a criminal matter. Between June 2003, and April 2004, DiValentin paid Respondent \$18,750 in advanced fees.

Respondent continued DiValentin's matter several times. On one of those occasions, the court sanctioned Respondent for being late and failed to show up for a December 2004 court appearance.

One week later, Respondent appeared in court and asked to be removed from DiValentin's case. The court removed Respondent and appointed a public defender to represent DiValentin.

Respondent stipulates that he owes DiValentin \$10,000 of the advance fees that that DiValentin paid him. If DiValentin finds this amount unacceptable, Respondent agrees to initiate fee arbitration for this fee dispute and to be bound by the decision of the arbitrator. Respondent has not refunded any of DiValentin's unearned fees.

### **Conclusions of Law**

By failing to make a court appearance, incurring a sanction in DiValentin's case, and by failing to perform services of any value to DiValentin in DiValentin's criminal matter, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of Rules Professional Conduct, rule 3-110(A).

By not promptly refunding the advanced fees that DiValentin paid Respondent, he failed to refund unearned fees in violation of Rules Professional Conduct, rule 3-700(D)(2).

### **The Ballat matter**

Issa Ballat hired Respondent in September 2004, to represent him in a collection action pending against Ballat. Ballat paid Respondent \$500 to represent him and informed him that a debtor's examination was scheduled in November 2004.

Respondent failed to appear at the November debtor's examination. The court continued the examination until January 2005. Ballat called Respondent and informed him that he had missed the debtor's examination due to illness, and promised that he would attend the next hearing.

Respondent did not attend the next hearing. Ballat has not heard from Respondent since. Respondent abandoned Ballat's matter.

Respondent performed no legal services for Ballat, as a result Respondent owes Ballat the entire \$500 that he paid him. Respondent has not refunded any of Ballat's unearned fees.

### **Conclusions of Law**

By failing to appear in Ballat's matter, and failing to perform legal services of any value in the Ballat matter, Respondent wilfully failed to perform legal services with competence in violation of Rules Professional Conduct, rule 3-110(A).

By not promptly refunding the advanced fees that Ballat paid Respondent, he failed to refund unearned fees in violation of Rules Professional Conduct, rule 3-700(D)(2).

### **06-O-10683 - The Boruff matter**

In October 2004, Linda Boruff hired Respondent to represent her in a family law matter and paid Respondent \$2,900. Respondent drafted and mailed a demand letter for Ms. Boruff and conducted followup discussions on the topic of the demand letter.

Respondent then stopped working the Boruff matter and performed no further work for Ms. Boruff.

Respondent stipulates that he owes Boruff \$2,500 of the advance fees that that Boruff paid him. *If Boruff finds this amount unacceptable, Respondent agrees to initiate fee arbitration for this fee dispute and to be bound by the decision of the arbitrator.* Respondent has not refunded any of Boruff's unearned fees.

### **Conclusion of Law**

By failing to complete the work that he was hired to perform on Boruff's matter, Respondent wilfully failed to perform legal services with competence in violation of Rules Professional Conduct,

rule 3-110(A).

#### **05-O-4049 - The Duitsman matter**

In January 2002, Thomas Duitsman hired Respondent to represent him in an employment matter. Duitsman paid Respondent about \$1,600. Respondent performed some work, but did not complete the case.

Respondent contends that he does not owe Duitsman a refund of any unearned fees. If Duitsman finds this unacceptable, Respondent agrees to initiate fee arbitration for this fee dispute and to be bound by the decision of the arbitrator.

#### **Conclusion of Law**

By failing to complete the work that he was hired to perform on Duitsman's matter, Respondent wilfully failed to perform legal services with competence in violation of Rules Professional Conduct, rule 3-110(A).

#### **B. PENDING PROCEEDINGS**

The disclosure date referred to on page one, paragraph A.(7), was April 27, 2006.

#### **C. SUPPORTING AUTHORITIES**

*In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32

In *In the Matter of Aguiluz*, the attorney was given one year stayed suspension and two years probation for failing to perform competently and abandonment of the clients' case without notifying them, returning their file, or shielding their rights from foreseeable prejudice in a single matter. Aguiluz also made misrepresentations to his clients by denying that he had withdrawn as their counsel and he refused to give the clients their file until they paid him additional fees. Both mitigating and aggravating circumstances were found. Aguiluz had no prior discipline.

#### **D. DISMISSALS**

The State Bar moves the court to dismiss the following counts in the interest of justice:

- Count Three;
- Count Six; and
- Count Eleven.

#### **E. OTHER AGREEMENTS - RESTITUTION**

Respondent will pay a minimum of \$569 per month in Restitution until all restitution is paid in full. Respondent will pay a minimum of \$100 per month to Newton, Crowe, Ballat, and Boruff until

each of them is paid in full. Respondent will pay a minimum of \$169 per month to DiValentin until he is paid in full.

When Respondent finishes paying restitution to Newton, Crowe, Ballat, and Boruff, he will add the \$100 that he was paying to the amount that he is paying to DiValentin.

For example after Respondent finishes paying Ballat's restitution, he will begin paying \$269 to DiValentin per month, when Respondent finishes paying Newton's restitution he will begin paying \$369 to DiValentin per month, etc.

At the end of his probationary period Respondent must either pay the balance of all restitution that is still owed in one final balloon payment, or he must petition the court to ask to extend his probation and ask for more time to complete his restitution payments..

#### **E. OTHER AGREEMENTS - COSTS**

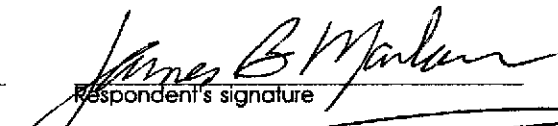
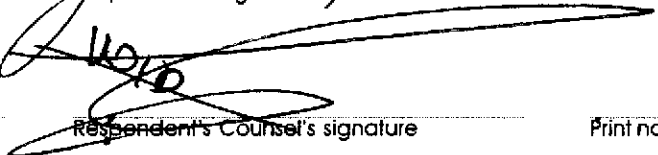

The parties agree that costs in this matter are likely to be approximately \$5,400.

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In the Matter of  JAMES B. MARKUM	Case number(s): 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)
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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 <u>5/1/06</u>	 Respondent's signature	JAMES B. MARKUM Print name
Date <u>5/5/6</u>	 Respondent's Counsel's signature	 Print name
Date <u>5/5/6</u>	 Deputy Trial Counsel's signature	ANTHONY GARCIA Print name

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In the Matter of James B. Markum	Case number(s): 04-0-15325; 04-0-15843; 05-0-00396; 05-0-00459; (05-0-04049; 06-0-10683)
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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

5-9-06

Judge of the State Bar Court  
**ROBERT M. TALCOTT**



**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 May 9, 2006, 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:

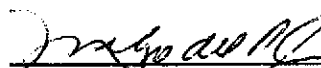
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES B. MARKUM  
ATTORNEY AT LAW  
71703 ESTELLITA DR  
RANCHO MIRAGE, CA 92270**

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

**Anthony Garcia, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 9, 2006.

  
\_\_\_\_\_  
**Milagro del R. Salmeron**  
Case Administrator  
State Bar Court