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**State Bar Court of California  
Hearing Department**

**PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES**

<p>Counsel For The State Bar</p> <p><b>Cydney Batchelor</b> Deputy Trial Counsel 180 Howard St., 7<sup>th</sup> Fl. San Francisco, CA 94105 Tele: 415/538-2204</p> <p>Bar # 114637</p>	<p>Case Number (s)</p> <p><b>PUBLIC MATTER</b></p> <p>05-O-00089-JMR</p> <p><b>FILED</b> <i>[Signature]</i></p> <p>MAR 0 1 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p><del>CONFIDENTIAL</del></p> <p><b>LODGED</b></p> <p>JAN 08 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p><b>Kenneth H. Wine, Esq.</b> 345 Franklin St. San Francisco, CA 94102 Tele: 415/621-2400</p> <p>Bar # 142385</p>	<p>Submitted to:</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p><b>ARTHUR E. FISHER</b></p> <p>Bar # 91650</p> <p>A Member of the State Bar of California (Respondent)</p>		

**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 May 9, 1980.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 8 pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See attached.
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". See attached.
- (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.



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- (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 [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:
- (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. **See attached**
- (8)  **No aggravating circumstances are involved.**

**Additional aggravating circumstances:**           None.

**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.

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- (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 to the State Bar during disciplinary investigation and proceedings. See attached.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$     on     in restitution to     without the threat 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.  
See attached
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.  
See attached
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.  
See attached
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.  
See attached
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

**Additional mitigating circumstances:** See attached.

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF:      **ARTHUR E. FISHER**

CASE NUMBER:            **05-O-00089**

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct.

**Case No. 05-O-00089**

**Facts:**

1. On August 28, 2003, the California Supreme Court entered an order in case number S118232, effective September 16, 2003, that suspended respondent from the practice of law as a result of his failure to pay State Bar of California membership fees. On August 28, 2003, the State Bar's membership records office properly served a copy of this order on the respondent at his State Bar membership records address, and respondent received it. Respondent remained on administrative suspension, and not entitled to practice law for failure to pay his Bar dues, continuously from September 16, 2003 until November 3, 2004.

2. On July 15, 2004, the State Bar of California Office of Certification - MCLE ("Certification") properly served, by certified mail return receipt requested, a MCLE Non-Compliance 60-Day Notice on respondent regarding his failure to comply with MCLE requirements due on or before January 31, 2004 ("60-day notice"). The 60-day notice was served on respondent at his State Bar membership records address, and he received it.

3. On August 6, 2004, Certification sent respondent a MCLE Non-Compliance Final Notice ("the final notice") at his State Bar membership records address, informing him *inter alia*, the following:

To avoid being placed on Not Entitled status, you must ensure that the items listed . . . above are submitted to the State Bar by 5pm, September 15, 2004.

Respondent received the final notice.

4. On September 16, 2004, Certification administratively placed respondent on "Not Entitled" status to practice law as a result of his failure to comply with MCLE

requirements due by January 31, 2004. Respondent remained on administrative suspension, and not entitled to practice law for failure to comply with MCLE requirements, continuously from September 16, 2004 until November 30, 2004.

5. On September 23, 2004, Certification sent respondent a MCLE Non-Compliance; Notice of Enrollment of Not Entitled Status on the Respondent at his State Bar membership records address informing respondent, *inter alia*, the following:

**YOU HAVE BEEN ENROLLED ON NOT ENTITLED STATUS EFFECTIVE  
SEPTEMBER 16, 2004.  
YOU ARE NOT ELIGIBLE TO PRACTICE LAW AS OF THAT DATE AND  
YOU WILL NOT BE ELIGIBLE TO PRACTICE UNTIL YOU HAVE BEEN  
REINSTATED TO ACTIVE STATUS.**

6. On November 2, 2004, respondent signed under penalty of perjury his MCLE Compliance Card and submitted it to Certification. At no time did Respondent provide any proof to Certification that he complied with his MCLE requirements prior to November 2, 2004 – the date he signed his MCLE compliance card.

7. On November 4, 2004, Certification sent a letter to respondent requesting that he submit proof of 25 hours of MCLE including 4 hours of Legal Ethics; 1 hour of Substance Abuse; and 1 hour of Elimination of Bias credit.

8. On November 4, 2004, while respondent was actually not entitled to practice law, he filed a Special Demurrer on behalf of the defendants in the matter entitled, *Athletics Investment Group, LLC vs. Draper & Esquin Wine & Spiritis, LLC*, Alameda County Superior Court case number RG04177102, thereby practicing law. Respondent did not inform the court or opposing counsel that he was suspended from the practice of law.

9. On November 10, 2004, Assistant General Counsel for the Oakland Athletics wrote a letter addressed to the court informing the court that respondent was not eligible to practice law.

10. On November 11, 2004, respondent wrote a letter addressed to the court in response to the Oakland Athletics' November 10, 2004 letter stating, in part, the following:

My Bar membership status of "not entitled" is the result of a misunderstanding between myself and the California State Bar's MCLE Section, which I am working hard to correct. I would not have attempted this representation had I not considered the situation resolved.

11. On November 30, 2004, respondent sent a letter to Certification enclosing his proof of 25 hours of MCLE. Contrary to respondent's earlier certification under penalty of perjury that he had completed his MCLE prior to November 4, 2004, respondent's proof showed that he took a total of 25.25 hours of MCLE on November 26, 2004, November 29, 2004 and November 30, 2004.

**Conclusions of Law:**

By willfully filing the Special Demurrer in Alameda County Superior Court while representing clients in the *Athletic Investment Group* litigation, respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar, in violation of Business and Professions Code section 6125 and 6126, thereby failing to support the laws of the State of California in violation of Business and Professions Code section 6068(a). By misrepresenting to Certification that he had complied with his MCLE requirements when, in truth and in fact, he had not complied by November 2, 2004, respondent committed an act involving dishonesty, in violation of Business and Professions Code section 6106. By misrepresenting to the court that he was entitled to practice law when he was not an active member of the State Bar and by misrepresenting the true facts and circumstances surrounding his not entitled status to the court, respondent committed further acts of dishonesty, in violation of Business and Professions Code section 6106.

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), was September 1, 2006.

**AGGRAVATING FACTORS:**

**Multiple Acts of Misconduct:** The misconduct stipulated to herein involves multiple acts of misconduct.

**MITIGATING CIRCUMSTANCES.**

**Candor and cooperation:** Through counsel, respondent has been completely candid and cooperative with the State Bar during the resolution of this case.

**Physical Problems:** In 1998, respondent was hit by an automobile while he was a pedestrian. As a result, he suffered a significant brain injury, and spent several years on disability. Respondent has now recovered from his injuries.

**Financial Problems:** In early 2004, respondent's disability insurance carrier determined that respondent was fully recovered from his head injury, and discontinued his disability benefits without warning. Respondent and his family suffered financial difficulties, including being evicted three times and being homeless for a time.

**Family Problems:** As a result of respondent's head injury and financial difficulties, respondent also suffered severe family problems.

**Good Character:** Respondent has provided the State Bar with six letters from a wide range of references, who attested to respondent's good character after being fully informed about the misconduct herein.

**ADDITIONAL MITIGATING CIRCUMSTANCES.**

**No prior record:** Although the misconduct stipulated to above is serious, it should be noted that respondent has no prior record of discipline since being admitted to practice in 1980, which is 14 years before the first act of misconduct stipulated to herein..

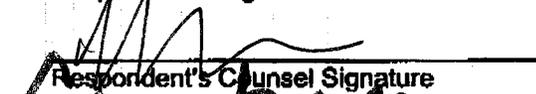
**Participation in Lawyer Assistance Program:** On June 16, 2006, respondent contacted the State Bar Lawyer Assistance Program("LAP"). On June 29, 2006, he completed the LAP intake interview and signed the pre-enrollment evaluation plan. At the conclusion of the LAP evaluation, respondent will meet with the LAP Evaluation Committee and then enter into a long-term participation plan.

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In the Matter of  <b>ARTHUR E. FISHER</b>	Case number(s):  <b>05-O-00089-JMR</b>
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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>9/7/2006</u> Date	 Respondent's Signature	<u>ARTHUR E. FISHER</u> Print Name
<u>9/7/06</u> Date	 Respondent's Counsel Signature	<u>KENNETH H. WINE</u> Print Name
<u>9/8/06</u> Date	 Deputy Trial Counsel's Signature	<u>CYDNEY BATCHELOR</u> Print Name

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

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In the Matter of ARTHUR EGBERT FISHER	Case number(s): 05-O-00089-JMR
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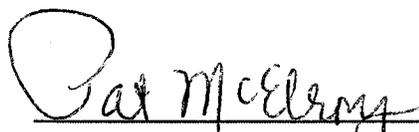
### ORDER

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 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(d), Rules of Procedure.)

Jan 8, 2007  
Date

  
PAT MCELROY  
Judge of the State Bar Court