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State Bar Court of California Hearing Department Los Angeles PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar David T. Sauber Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2299 Tel.: (213) 765-1252 Bar # 176554	Case Number (s) 05-O-00235; 05-O-00784; 05-O-01109; 05-O-02788	(for Court's use) <div style="text-align: center;"> PUBLIC MATTER FILED OCT 16 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent Paul Jean Virgo P. O. Box 67682 Los Angeles, CA 90067-0682 Bar # 67900	Submitted to: Program Judge	
In the Matter Of: David D. Moriel Bar # 164875 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 15, 1993**.
- (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 17 pages, excluding 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) 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 [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.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None.

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

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- (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:

None.

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: DAVID D. MORIEL, Bar No. 164875

CASE NUMBERS: 05-O-00235; 05-O-00784; 05-O-01109; 05-O-02728

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute causes for discipline in these matters.

Facts for Case No. 05-O-00235:

1. On or about January 12, 2004, Alvina Dorado ("Dorado") hired Respondent to represent her in a bankruptcy proceeding under Chapter 7 of 11 U.S.C. §§ 101-1330, i.e., the federal bankruptcy law. Dorado paid Respondent advanced attorney fees of \$1,000 and filing fees of \$200 to file the bankruptcy petition and obtain a discharge from the Bankruptcy Court.
2. Between on or about March 1, 2004 and on or about April 30, 2004, Dorado called Respondent's office once or twice a week to obtain a status report on the bankruptcy petition. Dorado was unable to talk to Respondent and Dorado left messages for Respondent with his receptionist or on his telephone message system requesting that he return her telephone call and provide a status report on the filing of the bankruptcy petition. Respondent received the messages.
3. In or about early May 2004, Respondent called Dorado and told her that he had been out of the country and would immediately prepare and file the bankruptcy petition.
4. In or about early June 2004, Respondent called Dorado and asked her if her home had been homesteaded. Respondent told Dorado that he was going to send her several documents that she would need to have signed and notarized when she told him that her home had not been homesteaded. Respondent sent her such documents on or about July 16, 2004.
5. On or about August 2, 2004, Dorado met Respondent in his office to discuss the bankruptcy petition. Respondent told Dorado that: he had all of the information he needed to complete the petition; the petition would be filed in approximately one week; and they would have a court date on the petition in approximately three weeks.

6. Respondent did not file the bankruptcy petition on behalf of Dorado.

7. In or about October and November 2004, Dorado called Respondent's office once or twice a week to obtain a status report on the bankruptcy petition. Dorado was unable to talk to Respondent and Dorado left messages for Respondent with his receptionist or on his telephone message system requesting that he return her telephone call and provide a status report on the filing of the bankruptcy petition. Respondent received the messages.

8. In or about October and November 2004, Dorado called Respondent's cellular telephone once or twice a week to obtain a status report on the bankruptcy petition. Respondent did not answer his cellular telephone and Dorado left messages for him on his cellular telephone's message system requesting that he return her telephone call and provide a status report on the filing of the bankruptcy petition until the message system would no longer accept messages because it had reached its capacity. Respondent received the messages.

9. In or about December 2004, Dorado called Respondent's office and cellular telephone every other day to inform him that she had hired another attorney and requested a refund of the unearned advanced attorney and filing fees. Dorado was unable to talk to Respondent and Dorado left messages for Respondent with his receptionist, his telephone message system or his cellular telephone's message system informing him that she had hired another attorney and requested a refund of the unearned advanced attorney and filing fees. Respondent received the messages. Between December 19, 2004, and February 1, 2005, Respondent was unavailable due to his entry into a residential treatment facility.

10. In or about early December 2004 and on or about December 27, 2004, Dorado prepared two or three letters to Respondent informing him that she had hired another attorney and requested a refund of the unearned advanced attorney and filing fees. The December 27, 2004 letter also demanded that Respondent contact Dorado by January 10, 2005 to provide a status report or refund; otherwise, Dorado would file a complaint with the State Bar. The letters were placed in sealed envelopes correctly addressed to the Respondent. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the envelopes to Dorado. Respondent received the letters.

11. Respondent did not provide the status reports requested by Dorado, respond to the letters sent by Dorado, or otherwise communicate with Dorado. Respondent repaid Dorado on or about February 28, 2005, when his check number 2052 to Dorado in the amount of \$1,200 cleared.

12. On or about January 18, 2005, the State Bar opened an investigation, Case No. 05-0-00235, pursuant to a complaint filed by Dorado (the "Dorado matter.")

13. On or about February 10, 2005, a State Bar Investigator prepared a letter to Respondent requesting that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Dorado matter and requesting that he provide a written response by February 23, 2005. The letter was placed in a sealed envelope correctly addressed to the Respondent at his State Bar membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the envelope to the State Bar. Respondent received the letter.

14. On or about February 22, 2005, a woman called Dorado on behalf of Respondent. She told Dorado that there had been illness in Respondent's family and Respondent regretted failing to file the bankruptcy petition. The woman asked Dorado if she would be willing to withdraw her State Bar complaint if Respondent repaid the unearned advanced attorney and filing fees, which Dorado agreed to do.

15. On or about February 22, 2005, Respondent prepared and mailed a letter to Dorado stating that he had failed to refund the unearned advanced attorney and filing fees for two months because Respondent was unavailable due to his entry into a residential treatment facility. The letter enclosed a check for \$1,200 and thanked Dorado for "offer[ing]" to withdraw her complaint to the State Bar upon refund of the unearned advanced attorney and filing fees. Dorado received the letter and check. The check was cashed on or about February 28, 2005.

Conclusions of Law for Case No. 05-O-00235:

COUNT ONE: By failing to file the bankruptcy petition on behalf of Dorado, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT TWO: By failing to respond to the messages left by Dorado requesting status reports in or about October and November 2004, the messages left by Dorado requesting a refund of the unearned advanced attorney and filing fees in or about December 2004, and the two or three letters sent to him by Dorado requesting a refund of the unearned advanced attorney and filing fees in December 2004, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

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Facts for Case No. 05-O-00784:

16. Prior to January 12, 2004, Jose Manuel Bugarin ("Jose") hired Respondent to represent him in a dissolution of marriage from his spouse, Gloria Bugarin ("Gloria"). Jose paid Respondent advanced attorney fees of \$2,000 by check and \$600 by cash to represent him in the dissolution.

17. On or about January 12, 2004, Respondent filed a Petition for the Dissolution of Marriage in the Superior Court of California, County of Los Angeles ("Superior Court"), titled Jose Manuel Bugarin v. Gloria Bugarin, LASC Case No. KD060063 ("Bugarin v. Bugarin").

18. On or about March 16, 2004, Gloria's counsel filed a request that the Superior Court set an Order to Show Cause ("OSC") for Child Support, Spousal Support, and Attorney Fees and Costs ("Support") in Bugarin v. Bugarin. The Superior Court set the OSC for on or about April 23, 2004.

19. On or about March 22, 2004, Gloria's counsel served on Respondent and filed notice of the OSC re Support in Bugarin v. Bugarin on or about April 23, 2004. Respondent received the notice.

20. On or about April 22, 2004, Respondent and Gloria's counsel signed and filed a stipulation to continue the OSC re Support scheduled in Bugarin v. Bugarin for on or about April 23, 2004. The Superior Court granted the Stipulation and continued the OSC re Support to on or about July 28, 2004.

21. On or about April 27, 2004, Gloria's counsel served on Respondent and filed Notice of the Continuance re: OSC in Bugarin v. Bugarin to on or about July 28, 2004. Respondent received the notice.

22. On or about July 28, 2004, Respondent failed to appear for the OSC re Support in Bugarin v. Bugarin. Gloria's counsel appeared for the OSC and the Superior Court heard and granted Gloria's request for \$533 per month in child support.

23. On or about July 30, 2004, Gloria's counsel filed a Request for Trial Setting Family Law in Bugarin v. Bugarin.

24. On or about August 2, 2004, the Superior Court set a Trial Setting Conference ("TSC") in Bugarin v. Bugarin for on or about September 9, 2004. The Deputy Clerk served notice of the TSC on Respondent and Gloria's counsel. Respondent received the notice.

25. On or about August 19, 2004, Gloria's counsel served on Respondent and filed

Notice of the Continuance of the TSC in Bugarin v. Bugarin to on or about October 1, 2004. Respondent received the notice.

26. On or about September 9, 2004, a Status Conference was conducted in Bugarin v. Bugarin. Respondent and Gloria's counsel both appeared for the Status Conference, which was continued to on or about October 1, 2004.

27. On or about October 1, 2004, Respondent failed to appear for the TSC in Bugarin v. Bugarin. Gloria's counsel appeared for the TSC and the Superior Court set a Mandatory Settlement Conference ("MSC") for on or about December 16, 2004 and a two to four hour trial for on or about January 11, 2005.

28. On or about October 7, 2004, Gloria's counsel served on Respondent and filed Notice of the MSC for on or about December 16, 2004 and Trial set for on or about January 11, 2005 in Bugarin v. Bugarin. On or about October 7, 2004, Gloria's counsel filed Proof of Service of the Notice of the MSC and Trial in Bugarin v. Bugarin. Respondent received the notice.

29. On or about October 8, 2004, Gloria's counsel served on Respondent and filed an Amended Notice of the MSC for on or about December 16, 2004 and Trial set for on or about January 11, 2005 in Bugarin v. Bugarin that corrected courtroom for the MSC. Respondent received the amended notice.

30. On or about December 10, 2004, Gloria's counsel served on Respondent Gloria's MSC Brief in Bugarin v. Bugarin. The MSC Brief identified the date of the MSC as on or about December 16, 2004. On or about December 16, 2004, Gloria's counsel filed Gloria's MSC Brief. Respondent received the brief.

31. On or about December 16, 2004, Respondent failed to appear for the MSC in Bugarin v. Bugarin. Gloria's counsel appeared for the MSC and requested sanctions against Respondent, which the Superior Court agreed to hear at the trial on or about January 11, 2005.

32. As he was leaving the courthouse after the MSC on or about December 16, 2004, Gloria's counsel saw Respondent and asked him why he failed to appear for the MSC. Respondent was at the courthouse and appearing in a different matter in an nearby department. Respondent replied that he had thought that Jose and Gloria had reconciled. Gloria's counsel informed Respondent that Jose and Gloria had not reconciled and that the trial was set for on or about January 11, 2005. Respondent replied that he would be there with his client.

33. Between December 19, 2004, and February 1, 2005, Respondent was unavailable due to his entry into a residential treatment facility.

34. On or about December 20, 2004, Gloria's counsel served on Respondent and filed a Notice of Ruling regarding Respondent's failure to appear at the MSC in Bugarin v. Bugarin. The Notice identified the date of the trial as January 11, 2005 and that the Superior Court reserved the issue of sanctions against Respondent for failure to appear to the time of trial. Respondent received the notice.

35. On or about January 11, 2005, Respondent failed to appear for the trial in Bugarin v. Bugarin. Gloria's counsel appeared for the trial and the Superior Court ordered, inter alia, that: Gloria had sole legal and physical of their minor child; Jose was to pay the sum of \$595 per month in child support; Jose was to pay the sum of \$285 per month in spousal support; and that Jose was to pay \$10,800 as an equalization payment of community property.

36. On or about January 28, 2005, Gloria's counsel filed a Judgment of Dissolution in Bugarin v. Bugarin. On or about January 28, 2005, the Superior Court signed and entered the Judgment of Dissolution. Respondent filed a motion to set aside judgment and the OSC, both of which were granted and child and spousal support were reduced.

37. On or about February 2, 2005, the State Bar opened an investigation, Case No. 05-0-00784, pursuant to a complaint filed by Jose (the "Bugarin matter").

38. On or about March 2, 2005, and on or about April 22, 2005, a State Bar Investigator prepared letters to Respondent requesting that Respondent respond in writing to specified allegations of misconducted being investigated by the State Bar in the Bugarin matter and requesting that he provide written responses by March 16, 2005, and May 7, 2005, respectively.

39. The letters were placed in sealed envelopes correctly addressed to the Respondent at his State Bar membership records address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the envelopes to the State Bar. Respondent received the letters.

40. Between in or about May 2004 and in or about January 2005, Jose called Respondent eight to ten times to obtain a status report on Bugarin v. Bugarin. Jose was unable to talk to Respondent and left messages for Respondent with his receptionist or on Respondent's telephone message system requesting that Respondent return his telephone calls and provide status reports. Respondent received the messages.

41. Respondent did not provide the status report requested by Jose or otherwise communicate with Jose.

42. Respondent did not inform Jose that: (A) Gloria filed an OSC re Support; (B) Respondent did not file an opposition to Gloria's OSC re Support; (C) Respondent failed to appear for the OSC re Support on or about July 28, 2004; (D) a TSC was set for on or about October 1, 2004; (E) Respondent failed to appear for the TSC on or about October 1, 2004; (F) the MSC was set for on or about December 16, 2004; (G) Respondent failed to appear for the MSC on or about December 16, 2004; (H) the trial was set for on or about January 11, 2005; (I) Respondent did not appear for the trial on or about January 11, 2005.

Conclusions of Law for Case No. 05-O-00784:

COUNT FOUR: By failing to appear for the OSC re Support and appear for the Status Conference, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT FIVE: By failing to respond to the messages left by Jose requesting status reports between in or about May 2004 and in or about January 2005, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in wilful violation of Business and Professions Code section 6068(m).

COUNT SIX: By failing to inform Jose of. (A) the OSC re Support; (B) his failure to appear or oppose the OSC re Support; (C) the TSC; (D) his failure to appear for the TSC; (E) the MSC; (F) his failure to appear for the MSC; (G) the trial date; (H) his failure to appear for the trial; (I) the entry of Judgment of Dissolution, Respondent wilfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

Facts for Case No. 05-O-01109:

43. On or about November 15, 2001, a Petition for Dissolution of Marriage was filed by an attorney other than Respondent on behalf of Alicia Saavedra ("Alicia") in the Superior Court of California, County of Los Angeles ("Superior Court"), titled Alicia Saavedra v. Arturo Saavedra, LASC Case No. KD052950 ("Saavedra v. Saavedra").

44. Prior to on or about June 3, 2003, Joan C. Daniels, Esq. ("Daniels"), represented Alicia in Saavedra v. Saavedra.

45. On or about June 10, 2003, Alicia hired Respondent to represent her in Saavedra v. Saavedra and in a fee dispute with Daniels. Alicia paid Respondent advanced attorney fees of \$2,000 in cash to represent her in the dissolution and fee dispute.

46. On or about July 8, 2003, Respondent filed a Substitution of Attorney substituting

himself in place of Daniels as the attorney of record for Alicia in Saavedra v. Saavedra.

47. On or about July 22, 2003, Daniels prepared and mailed a letter to Alicia informing her that she owed Daniels the approximate amount of \$9,192.69 and that Daniels would file a lawsuit against to recover that amount unless Alicia elected fee arbitration.

48. On or about September 17, 2003, Respondent, Alicia, Arturo Saavedra ("Arturo"), and Arturo's counsel signed a "Stipulation Regarding the Sale of Community Real Property - Norwalk" ("Stipulation") that, inter alia, stipulated to make: payments of the amounts of \$37,000 to Respondent and Arturo's counsel from the sale of the real property; and a payment of the amount of \$2,108 to Respondent for an Order to Show Cause regarding Arturo's failure to pay child and spousal support. The Stipulation allocated \$12,000 of the \$37,000 payable to Respondent to pay the legal fees and costs allegedly owed by Alicia to Daniels.

49. On or about September 23, 2003, Respondent prepared and mailed a letter to the Orange County Bar Association, Mandatory Fee Arbitration Committee ("OC Bar"), providing documents "[o]n behalf of [his] client Ms. Alicia Saavedra" and enclosing, inter alia, a "Petition to Arbitrate a Fee Dispute" ("Petition to Arbitrate") listing Respondent as Alicia's attorney for the Fee Arbitration and a check from Respondent's Client Trust Account at Wells Fargo Bank, Account No. 290382472, for the amount of \$299.78 payable to the OC Bar for the cost of the "Fee Arbitration." Copies of the letter were mailed Daniels and Alicia.

50. On or about October 7, 2003, Daniels prepared and mailed her "Reply to Petition to Arbitrate a Fee Dispute" ("Reply") to the OC Bar and Respondent. Respondent received the Reply.

51. On or about October 23, 2003, Respondent prepared and mailed a letter enclosing the Reply to Alicia.

52. On or about February 26, 2004, Respondent received and reviewed the OC Bar's arbitration assignment.

53. On or about March 3, 2004, Respondent and Alicia met to discuss the status of Saavedra v. Saavedra, including but not limited to Alicia's request that Respondent pay the \$12,000 allocated by the Stipulation to pay the legal fees and costs allegedly owed by Alicia to Daniels directly to Alicia.

54. On or about April 12, 2004, Respondent prepared and hand delivered a letter to Alicia enclosing a check for \$12,000 consisting of the \$12,000 allocated by the Stipulation to pay the legal fees and costs allegedly owed by Alicia to Daniels.

55. On or about April 23, 2004, Respondent failed to appear before the OC Bar for the Fee Arbitration. Daniels appeared and the OC Bar conducted the arbitration. The OC Bar held that: (A) notice of the date and time for the arbitration hearing had been duly given; (B) no attempt had been made by Respondent to obtain a continuance or explain his failure to appear; (C) Respondent's failure to appear was "wilful and without just cause"; (D) costs and interest that should have been charged by Daniels were in the amount of \$14,640.08; (E) Alicia paid Daniels the amount of \$4,694.00; and (F) Daniels was entitled to recover the amount of \$9,946.08 from Alicia.

56. Respondent did not seek relief from his failure to appear or contest the arbitration award.

57. On or about June 25, 2004, Alicia hired the law firm of Galindo & Fox to represent her in Saavedra v. Saavedra. On or about July 9, 2004, Galindo & Fox filed a Substitution of Attorney substituting it in place of Respondent as the attorneys of record for Alicia in Saavedra v. Saavedra.

58. Between on or about June 13, 2003 and on or about May 25, 2004, Respondent claims to have spent approximately 15.75 hours at \$175 an hour or \$2,756.25 working on the fee arbitration.

59. Respondent did not inform Alicia that a date had been set for the arbitration hearing before the OC Bar, he would not attend the arbitration hearing, or the OC Bar rendered an award.

Conclusions of Law for Case No. 05-O-01109:

COUNT SEVEN: By failing to: appear for the fee arbitration on or about April 23, 2004; seek relief from his failure to appear; and/or contest the arbitration award, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT EIGHT: By failing to inform Alicia that a date had been set for the arbitration hearing before the OC Bar, he would not attend the arbitration hearing, or the OC Bar rendered an award, Respondent wilfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

Facts for Case No. 05-O-02728:

60. On or about March 15, 2004, Abraham and Aida Dinkjian (the "Dinkjians") were served with a civil complaint that had been filed on or about February 27, 2004 in the Superior Court of California, County of Los Angeles ("Superior Court"), titled Joe Bajakajian v. Abraham Dinkjian, Aida Dinkjian, Case No. BC 311344 ("Bajakajian v. Dinkjian").

61. On or about March 22, 2004, the Dinkjians hired Respondent to represent them in Bajakajian v. Dinkjian. The Dinkjians paid Respondent \$2,500 in advanced attorney fees by check to represent them in Bajakajian v. Dinkjian and gave Respondent a blank check payable to "L.A.S.C." for "Court Costs."

62. Between on or about March 22, 2004 and on or about May 7, 2004, the Dinkjians called Respondent's office at least once a week to obtain a status report on Bajakajian v. Dinkjian. Respondent's receptionist answered the telephone calls and the Dinkjians would leave messages with the Receptionist for Respondent to return their telephone call and provide a status report on Bajakajian v. Dinkjian. The Dinkjians also sent approximately two memos to Respondent by e-mail informing him that they had left messages for him to provide a status report on Bajakajian v. Dinkjian, had not received a status report, and were requesting that he provide them with status report. Respondent received the messages and e-mails.

63. On or about May 7, 2004, the Dinkjians were served with a Request for Entry of Default ("Request for Default") in Bajakajian v. Dinkjian that was filed with the Superior Court on or about May 10, 2004. The Superior Court did not enter the default as requested.

64. On or about May 10 and 14, 2004, Respondent prepared and e-mailed memos to the Dinkjians informing them that he was going to "file an answer and cross-complaint in the next day or two, and will be filed with the court and served on [Bajakajian's] attorney by the end of the week." Respondent told the Dinkjian's "[d]o not despair, all is on track. This process is slow and weeks if not months can pass before any meaningful activity occurs."

65. Between on or about May 14, 2004 and June 8, 2004, the Dinkjians called Respondent's office at least once a week to obtain a status report on Bajakajian v. Dinkjian. Respondent's receptionist answered the telephone calls and the Dinkjians would leave messages with the Receptionist for Respondent to return their telephone call and provide a status report on Bajakajian v. Dinkjian. The Dinkjians also sent approximately three memos to Respondent by e-mail informing him that they had left messages for him to provide a status report on Bajakajian v. Dinkjian, had not received a status report, and were requesting that he provide them with a status report. Respondent received the messages and e-mails.

66. On or about June 8, 2004, Respondent prepared and e-mailed a memo to the Dinkjians informing them that "[Bajakajian's] attorney agreed to set aside the default for all the right reasons. And as such, your case has not been prejudiced in anyway. ... I will keep you

advised as additional information come available and I request that you do the same."

67. Between on or about June 8, 2004 and on or about February 10, 2005, the Dinkjians called Respondent's office two or three times a month to obtain a status report on *Bajakajian v. Dinkjian*. Respondent's receptionist answered the telephone calls and the Dinkjians would leave messages with the Receptionist for Respondent to return their telephone call and provide a status report on *Bajakajian v. Dinkjian*. Respondent received the messages.

68. On or about October 29, 2004, the Superior Court issued an Order to Show Cause re: Entry of Default Judge ("OSC re Default") for on or about January 13, 2005 in *Bajakajian v. Dinkjian*. In the OSC re Default, the Superior Court sought clarification regarding the amount of damages. The default judgment was later set aside upon a motion made by Respondent.

69. Between in or about late 2004 and on or about February 10, 2005, the Dinkjians received a telephone call from a woman identifying herself as Respondent's spouse. The woman told the Dinkjians that Respondent was working on their matter and not to worry about the matter, but did not provide any information about the status of the matter.

70. Between December 19, 2004, and February 1, 2005, Respondent was unavailable due to his entry into a residential treatment facility.

71. On or about April 11, 2005, Respondent signed a Substitution of Attorney substituting out as the attorney of record for the Dinkjians and substituting in Paul N. Philips, Esq., as the attorney of record for the Dinkjians in *Bajakajian v. Dinkjian*. The Substitution of Attorney terminated Respondent's representation of the Dinkjians in *Bajakajian v. Dinkjian*.

72. Between being hired on or about March 22, 2004 and being terminated on or about April 11, 2005, Respondent did not provide any services of value. Respondent paid Dinkjian \$3,990 by check number 7176 which was cleared on or about November 7, 2007.

Conclusions of Law for Case No. 05-O-02728:

COUNT TEN: By failing to file any documents with the Superior Court on behalf of the Dinkjians in *Bajakajian v. Dinkjian* between on or about May 22, 2004 and on or about January 13, 2005, including but not limited to an answer or a substitution of attorney, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT ELEVEN: By failing to respond to the messages left by the Dinkjians requesting status reports between on or about June 8, 2004 and on or about February 10, 2005, Respondent wilfully failed to respond promptly to reasonable status inquiries of a client in wilful

violation of Business and Professions Code section 6068(m).

COUNT TWELVE: By failing to refund the unearned attorney fees of \$2,500 after being terminated on or about April 11, 2005, Respondent wilfully failed to refund promptly any part of a fee paid in advanced that has not been earned in wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

PENDING PROCEEDINGS.

The disclosure date referred to, on page two, paragraph A(6), was July 11, 2008.

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

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on September 25, 2007, in State Bar Court Case Number 07-O-10024 and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to the case which is the subject matter of this stipulation.

DISMISSALS

The State Bar requests that Count Three of Case No. 05-O-00235 be dismissed in the interests of justice.

The State Bar requests that Count Nine of Case No. 05-O-01109 be dismissed in the interests of justice.

FEE ARBITRATION

1) Case No. 05-O-01109: Respondent hereby agrees to write to Alicia Saavedra, within fifteen (15) days from the date he signs an ADP contract regarding this matter, and therein to offer to initiate, pay for, and participate in State Bar fee arbitration upon Saavedra's request regarding the \$2,000 advanced fees.

Respondent further agrees to abide by any final order in a fee arbitration with Saavedra. Respondent understands and agrees that his failure to write the letter, or to initiate or to pay for or to participate in fee arbitration upon Saavedra's request, or to abide by any final order, shall constitute a violation of his disciplinary resolution and/or his ADP participation and be cause for further State Bar action including his unsuccessful termination from the Alternative Discipline Program. Respondent shall provide such proof of compliance with this condition as

this court or the State Bar's Office of Probation may request. Additionally, should Respondent fail to comply, in any manner, with this provision, he shall be required to make restitution to Saavedra in the amount of \$2,000 plus 10% annual interest accruing from June 10, 2003.

Respondent waives the expiration of any time to resolve this dispute by fee arbitration.

2) Case No. 05-O-00784: Respondent hereby agrees to write to Jose Bugarin, within fifteen (15) days from the date he signs an ADP contract regarding this matter, and therein to offer to initiate, pay for, and participate in State Bar fee arbitration upon Bugarin's request regarding the \$2,600 advanced fees.

Respondent further agrees to abide by any final order in a fee arbitration with Bugarin. Respondent understands and agrees that his failure to write the letter, or to initiate or to pay for or to participate in fee arbitration upon Bugarin's request, or to abide by any final order, shall constitute a violation of his disciplinary resolution and/or his ADP participation and be cause for further State Bar action including his unsuccessful termination from the Alternative Discipline Program. Respondent shall provide such proof of compliance with this condition as this court or the State Bar's Office of Probation may request. Additionally, should Respondent fail to comply, in any manner, with this provision, he shall be required to make restitution to Bugarin in the amount of \$2,600 plus 10% annual interest accruing from January 12, 2004.

Respondent waives the expiration of any time to resolve this dispute by fee arbitration.

moriel 05-O-00235 stipatt\C:\Documents and Settings\hernandr\Local Settings\Temporary Internet Files\OLK4\stip-attach-formatted-revised7-RCltof070708-moriel.wpd

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In the Matter of David D.	Case number(s): 05-O-00235; 05-O-00784; 05-O-01109; 05-O-02728
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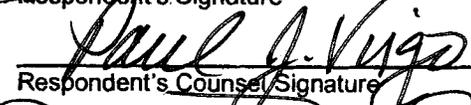
SIGNATURE OF THE PARTIES

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.

<u>07.14.08</u> Date	 Respondent's Signature	_____ David D. Moriel Print Name
<u>7/14/2008</u> Date	 Respondent's Counsel Signature	_____ Paul Jean Virgo Print Name
<u>7-17-08</u> Date	 Deputy Trial Counsel's Signature	_____ David T. Sauber Print Name

(Do not write above this line.)

In the Matter Of David D. Moriel	Case Number(s): 05-O-00235; 05-O-00784; 05-O-01109; 05-O-02728
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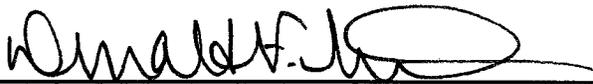
ORDER

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.)

10/14/08
Date



Judge of the State Bar Court
DONALD F. MILES

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 October 16, 2008, I deposited a true copy of the following document(s):

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:

PAUL JEAN VIRGO, ESQ.
PO BOX 67682
LOS ANGELES, CA 90067 - 0682

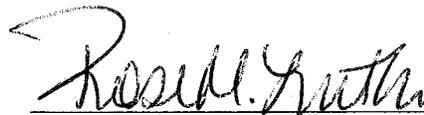
by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

MONIQUE MILLER, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 16, 2008.



Rose Luthi
Case Administrator
State Bar Court