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**State Bar Court of California  
Hearing Department  
Los Angeles**

<p>Counsel For The State Bar</p> <p><b>Joseph R. Carlucci</b> State Bar of California 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 172309</p>	<p>Case Number (s) 05-O-00721, 05-O-00909, 05-O-00911</p> <p align="center"><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p align="center"><b>FILED</b></p> <p align="center">MAY 17 2007</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Michael G. Gerner</b> 10100 Santa Monica Blvd. Suite 300 Los Angeles, CA 90067 (310) 772-2207</p> <p>Bar # 65906</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>KENNETH P. FERIA</b></p> <p>Bar # 221685</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 **December 3, 2002**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **19** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline.
  - costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (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.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

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

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

**Additional mitigating circumstances**

## D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **18 months**.

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

The above-referenced suspension is stayed.

(2)  **Probation:**

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

## E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (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 the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (8)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

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Attachment language (if any):

**SEE ATTACHMENT**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:           KENNETH P. FERIA (No. 221685)

CASE NUMBERS:           05-O-00721-RAH, 05-O-00909-RAH, 05-O-00911-RAH

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and *Rules of Professional Conduct*.

**THE "WEBER" MATTER - Case no. 05-O-00721-RAH**

FACTS

On August 4, 2000, Jan Weber ("Weber") was injured in an automobile accident. Weber initially represented herself in negotiations with her automobile insurance carrier, 21<sup>st</sup> Century Insurance Company ("21<sup>st</sup> Century"). 21<sup>st</sup> Century was represented by Marilyn Muir Jager of Morris, Polich & Purdy, LLP ("Jager").

On August 30, 2001, Jager filed a "Notice of Designation of Uninsured Motorist Action Pursuant to Insurance Code § 11580.2" in the Superior Court of the State of California for the County of Los Angeles ("Superior Court" or "LASC") titled *In the Matter of Arbitration Between Jan Weber vs 21<sup>st</sup> Century Insurance Company*, LASC Case No. SS010301 ("*Weber Arbitration*").

On March 29, 2002, Weber entered into a contingency fee agreement between herself and the Law Offices of Lorraine Lutfi ("LO of Lutfi") to have the LO of Lutfi represent her in the *Weber Arbitration*.

Following his admission the State Bar of California on December 3, 2002, Respondent began performing legal services for the LO of Lutfi as an independent contractor. Once Respondent was admitted to the State Bar, Weber, Lutfi and Respondent agreed that Respondent take over the representation of Weber in the *Weber Arbitration* in place of the LO of Lutfi and assume responsibility for the further handling of the matter.

On March 20, 2003, Jager prepared and served on Respondent a "Notice of Independent Medical Examination" of Weber for April 29, 2003. Respondent received the March 20, 2003 notice.

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On April 28, 2003, Respondent called and spoke with Jager to attempt to cancel the medical examination of Weber set for April 29, 2003.

On April 28, 2003, Jager prepared and mailed a letter to Respondent by facsimile and regular mail confirming that Respondent had attempted to cancel the medical examination of Weber set for April 29, 2003. Respondent received the April 28, 2003 letter.

On April 29, 2003, Weber failed to appear for her medical examination.

On April 29, 2003, Jager called Respondent and left a message for him to call her regarding the medical examination of Weber. Respondent received the message.

Respondent did not respond to Jager's April 29, 2003 message, or otherwise communicate with Jager.

On May 22, 2003, Jager prepared and mailed a meet and confer letter to Respondent by facsimile and regular mail to attempt to set a date for the medical examination of Weber. Respondent received the May 22, 2003 letter.

On June 5, 2003, Respondent called and spoke with Jager to make a policy limits demand to settle Weber's case, which Jager declined, in part, because Weber had neither submitted to a medical examination nor provided supplemental interrogatory responses.

On June 5, 2003, Jager prepared and mailed a letter to Respondent confirming the policy limits demand. Respondent received the June 5, 2003 letter.

On June 17, 2003, Jager prepared and mailed a meet and confer letter to Respondent by facsimile and regular mail setting a date for the medical examination of Weber. The letter warned Respondent that Jager would file a motion to compel if Respondent refused to make Weber available. Respondent received the June 17, 2003.

Respondent did not respond to Jager's June 17, 2003 letter, or otherwise communicate with Jager.

On June 18, 2003, Respondent failed to appear for a regularly scheduled Further Status Conference in the *Weber Arbitration*, of which he had notice. The Superior Court ordered that the Status Conference would be continued to September 16, 2003.

On July 10, 2003, Jager filed and served on Respondent a Motion for an Order Compelling Physical Examination of Claimant Jan Weber; Request for Sanctions ("Motion re



Examination"). The hearing date for the motion was August 26, 2003. Respondent received the June 10, 2003 motion.

Respondent did not respond to the Motion re Examination, or otherwise communicate with Jager.

On August 26, 2003, Respondent failed to appear at the hearing on the Motion re Examination. The Superior Court granted the motion and ordered Weber to appear for her medical examination within 30 days.

On August 26, 2003, Jager prepared and mailed a letter to Respondent setting forth the order of the Superior Court granting the Motion re Examination, and requesting supplemental interrogatory responses from Weber. The letter warned Respondent that Jager would file a motion to compel the supplemental interrogatory responses from Weber if Respondent did not provide them. Respondent received the August 26, 2003 letter.

Respondent did not respond to Jager's August 26, 2003 letter, or otherwise communicate with Jager.

On August 28, 2003, Jager filed and served on Respondent a "Notice of Ruling" setting forth the order of the Superior Court granting the Motion re Examination, ordering Weber to appear for her medical examination within 30 days. Respondent received the August 28, 2003 notice.

Respondent took no steps to advise Weber of the medical examination or ensure that Weber appear for her medical examination within 30 days as ordered by the court

On September 16, 2003, Respondent failed to appear for the Further Status Conference. The Superior Court ordered a Further Status Conference for January 14, 2004.

On September 24, 2003, Jager filed and served on Respondent a "Notice of Further Status Conference" setting forth the order of the Superior Court setting a Further Status Conference for January 14, 2004. Respondent received the September 24, 2003 notice.

On January 8, 2004, Jager filed and served on Respondent a Motion to Compel Claimant's Responses to Supplemental Interrogatories and Request for Sanctions. ("Motion re Interrogatories"). The hearing date for the motion was February 5, 2004. Respondent received the January 8, 2004 motion.

Respondent did not respond to the Motion re Interrogatories, or otherwise communicate with Jager.

On January 14, 2004, Respondent failed to appear for the Further Status Conference. The Superior Court issued an order to show cause ("OSC") re dismissal of the *Weber Arbitration* for February 18, 2005.

On January 16, 2004, Jager filed and served on Respondent a Notice of Ruling setting forth the order of the Superior Court issuing an OSC for February 18, 2004. Respondent received the January 16, 2004 notice.

On February 5, 2004, Respondent appeared for the hearing on the Motion re Interrogatories. The Superior Court granted the motion, ordered Weber to provide responses within 20 days.

Respondent did not provide responses to the Interrogatories within 20 days.

On February 19, 2004, Jager filed and served on Respondent a Notice of Ruling setting forth the order setting a Further Status Conference for March 23, 2004. Respondent received the February 19, 2004 notice.

On March 5, 2004, Jager filed and served on Respondent a Motion for an Order Dismissing Claimant's Responses to Supplemental Interrogatories and Request for Monetary Sanctions ("Motion re Dismissal"). The motion sought to dismiss the *Weber Arbitration* because Respondent had failed to comply with the Superior Court's February 5, 2004 to provide responses on behalf of Weber to the supplemental interrogatories within 20 days. The hearing on the motion was set for April 13, 2004. Respondent received the March 5, 2004 motion.

Respondent did not respond to the Motion re Dismissal, or otherwise communicate with Jager.

On April 13, 2004, Respondent failed to appear for the hearing on the Motion re Dismissal. The Superior Court granted the motion and dismissed the demand for arbitration for failure of Respondent to provide responses to the supplemental interrogatories within 20 days of February 5, 2004. Respondent took no steps to set aside the dismissal of the *Weber Arbitration*.

On April 22, 2004, Jager filed and served on Respondent a Notice of Ruling setting forth the order of the Superior Court dismissing the demand for arbitration for failure of Respondent to provide responses to the supplemental interrogatories within 20 days of February 5, 2004.

Between June 2002 and June 2003, Weber called Respondent's office approximately two to three times per month and left messages for him to call her and give her a status report on the *Weber Arbitration*. Respondent did not communicate with or otherwise contact Weber in

response to her messages.

Between January 2004 June 2004, Weber again called Respondent's office approximately once a week and left messages for him to call her and give her a status report on the *Weber Arbitration*. Respondent did not communicate with or otherwise contact Weber in response to her messages.

### LEGAL CONCLUSIONS

By failing to: take any steps to see that Weber appear for a medical examination; oppose the Motion re Examination; appear for the hearing on the Motion re Examination; serve supplemental interrogatory responses; oppose the Motion re Interrogatories; appear for the Motion re Interrogatories; oppose the Motion re Dismissal; appear for the hearing on the Motion re Dismissal; and take any steps to set aside the dismissal, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in wilful violation of rule 3-110(A), *Rules of Professional Conduct*.

By failing to respond to the messages that Weber left for him to provide her with a status report regarding the *Weber Arbitration*, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of *Business and Professions Code*, section 6068(m).

### **THE "MUNNS" MATTER - Case no. 05-O-00900-RAH**

#### FACTS

On December 6, 2003, Jacklin Munns ("Munns") was assaulted by four individuals, Vahig Markarian, Karen Derderian, Anita Gale DelMonico, and Navone Johns, while attending a memorial service for her recently deceased father.

On January 7, 2004, Munns hired Respondent to represent her in a civil lawsuit against her assailants.

On January 26, 2004, Respondent filed a complaint in the Superior Court of the State of California, County of Los Angeles ("Superior Court" or "LASC") on behalf of Munns titled *Jacklin Munns v. Vahig Markarian, Karen Derderian, Anita Gale DelMonico, and Navone Johns*, LASC Case No. BC309496 ("*Munns v. Markarian I*").

On March 8, 2004, the counsel for Vahig Markarian, Veatch, Carlson, Grogan & Nelson ("Veatch-Carlson"), served form interrogatories, special interrogatories, and requests for production of documents (collectively "discovery devices") on Respondent. The responses to the discovery devices were due on or before April 12, 2004. Respondent received the March 8,

2004 discovery devices.

Respondent requested and received two extensions to respond to the discovery devices, but failed to provide Munns' responses on or before the expiration of each of those extensions.

On June 28, 2004, Veatch-Carlson filed and served on Respondent motions to compel responses to the discovery devices ("Motions to Compel"). Respondent received the June 28, 2004 Motions to Compel.

On June 29, 2004, Respondent e-mailed unverified responses to the discovery devices to Veatch-Carlson. In his e-mail, Respondent stated that a hard copy would be served by regular mail. Veatch-Carlson did not receive the hard copy of the responses to the discovery devices.

During the deposition of Munns on June 30, 2004, Veatch-Carlson told Respondent that it had not received verified responses to the discovery devices.

On July 15, 2004, Veatch-Carlson sent a letter to Respondent by facsimile and regular mail informing him that it had not received verified responses to the discovery devices and that it would proceed with the Motions to Compel if verified responses were not received. Respondent received the July 15, 2004 letter.

On July 16, 2004, Veatch-Carlson filed and served on Respondent a notice that unverified responses to the discovery devices had been e-mailed by Respondent. Respondent received the July 16, 2004 notice.

Respondent did not serve verified responses to the discovery devices, or file any opposition to the Motions to Compel with the Superior Court.

On July 22, 2004, Respondent failed to appear for a combined status conference and hearing on the Motions to Compel. The Superior Court granted the Motions to Compel, ordered responses with appropriate verifications to be provided by August 5, 2004, and ordered Respondent to appear in court on September 2, 2004 to show cause why sanctions should not be imposed for failing to appear for the status conference ("OSC"). Veatch-Carlson was ordered to give notice.

On July 23, 2004, Veatch-Carlson filed and served on Respondent a Notice of Ruling regarding the July 22, 2004 orders of the Superior Court, including the OSC ordered for September 2, 2004. Respondent received the July 23, 2004 notice.

Respondent did not serve verified answers to the discovery devices by August 5, 2004, or any time thereafter.

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On August 13, 2004, the Superior Court served notice on the parties in *Munns v. Markarian I* that the September 2, 2004 OSC was continued to September 21, 2004.

On August 16, 2004, the Superior Court filed and served an order confirming its July 22, 2004 rulings.

On September 21, 2004, Respondent failed to appear for the OSC. The Superior Court held that Respondent failed to comply with previous orders of the Court and dismissed the complaint filed by Munns in *Munns v. Markarian I*.

On September 29, 2004, counsel for defendants Karen Derderian and Navone Johns filed and served on Respondent notice of dismissal of the complaint filed by Munns in *Munns v. Markarian I*. Respondent received the September 29, 2004 notice.

On January 11, 2005, Respondent filed a second complaint in the Superior Court on behalf of Munns titled *Jacklin Munns v. Vahig Markarian, Karen Derderian, Anita Gale DelMonico, and Navone Johns*, LASC Case No. BC327087 ("*Munns v. Markarian II*").

Between January 2004 and December 2004, Munns called Respondent's office or his cell phone approximately once a month and left messages for him to call her and give her a status report on the action. Respondent did not communicate with or otherwise contact Munns in response to her messages.

#### LEGAL CONCLUSIONS

By failing to: provide verified responses to the discovery devices; oppose the Motions to Compel; appear for the hearing on the Motions to Compel; prosecute *Munns v. Markarian I*; and prevent *Munns v. Markarian I* from being dismissed, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A), *Rules of Professional Conduct*.

By failing to return the messages left by Munns requesting a status report from in or about January 2004 to December 2004, Respondent wilfully failed to respond promptly to the reasonable status inquiries of a client in wilful violation of *Business and Professions Code*, section 6068(m).

**THE "MARTIN" MATTER - Case no. 05-O-00911-RAH**

FACTS

On October 23, 2003, Cheryl Martin ("Martin") was injured in an automobile accident with Adela R. Aleman ("Aleman").

In mid-November 2003, Martin hired Respondent to represent her in connection with the October 23, 2003 automobile accident.

On November 23, 2003, Respondent prepared and mailed two letters to Martin regarding his representation of her, including an "Employment of Legal Counsel Agreement" ("Employment Agreement"). Martin received the November 23, 2003 letters.

On December 9, 2003, Martin signed and returned Employment Agreement to Respondent. Respondent received the signed Employment Agreement.

On December 24, 2003, the insurance carrier representing Aleman, the Interinsurance Exchange of the Automobile Club ("AAA"), prepared and mailed a letter to Respondent stating that Aleman had liability insurance with limits of \$15,000/\$30,000 for Bodily Injury. Respondent received the December 24, 2003 letter.

On January 8, 2004, AAA made a policy limits offer to Respondent of \$15,000 to settle Martin's claims. Respondent received the January 8, 2004 offer.

Respondent did not respond to the offer made on January 8, 2004, or otherwise communicate with AAA or Martin.

On March 26, 2004, AAA prepared and mailed a letter to Respondent stating that Respondent had not communicated with AAA since AAA made the offer made on January 8, 2004 and requesting that Respondent respond to its offer. Respondent received the March 26, 2004 letter.

Respondent did not respond to the letter dated March 26, 2004, or otherwise communicate with AAA or Martin.

In August 2004, a woman contacted Martin on behalf of Respondent's office and told her that Respondent's office would be sending documents to her to sign and return to settle her claim against Aleman. Martin told the woman that she wanted to speak to Respondent before she would sign anything. The woman told Martin that Respondent would call and provide her with a status report.

Respondent did not contact Martin after the August 2004 request, or otherwise communicate with Martin.

On October 11, 2004, AAA prepared and mailed a letter to Respondent stating that Respondent had not communicated with AAA since AAA made the offer made on January 8, 2004 and requesting that Respondent respond to its offer. Respondent received the October 11, 2004 letter.

On October 16, 2004, Respondent prepared and mailed a letter to AAA stating that Martin accepted the offer and requesting that AAA forward the settlement and release that it wanted Martin to sign. AAA received the October 16, 2004 letter.

On October 25, 2004, AAA prepared and mailed a letter to Respondent enclosing a "Release in Full Settlement and Compromise" ("Release") for Aleman to sign to receive the \$15,000 settlement. Respondent received the October 25, 2004 letter.

Respondent did not respond to the letter dated October 25, 2004, or otherwise communicate with AAA or Martin.

On November 18, 2004, Respondent changed his State Bar membership records address from m16027 Ventura Boulevard, Suite 202, Encino, California 91436 to 16130 Ventura Boulevard, Suite 140, Encino, California 91436-2503.

Respondent did not notify AAA or Martin that he changed his State Bar membership records address on or about November 18, 2004.

On January 25, 2005, AAA prepared and mailed a letter to Respondent stating that Respondent had not communicated with AAA since mailed him the Release on October 25, 2006 and requesting that Respondent contact AAA to resolve the matter. Respondent received the January 25, 2005 letter.

Respondent did not respond to the letter dated January 25, 2005, or otherwise communicate with AAA or Martin. In early 2005, Martin retained new counsel to represent her.

In August 2004, Martin asked the woman who contacted her on behalf of Respondent's office to have Respondent contact her and provide her a status report regarding her case. The woman told Martin that Respondent would call and provide her with a status report. Respondent did not communicate with or otherwise contact Martin after the August 2004 conversation.

Between August 2004 and February 2005, Martin called Respondent's office on

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approximately 20 occasions. She left a message each time that she called asking to have Respondent call her and provide her with a status report about her case. Respondent did not communicate with or otherwise contact Martin after any of her messages.

**LEGAL CONCLUSIONS**

By failing to take any effective action to prosecute or settle Martin's claim against Aleman, Respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence in wilful violation of rule 3-110(A), *Rules of Professional Conduct*.

By failing to respond to the messages left by Martin to contact her to provide her with a status report, Respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of *Business and Professions Code*, section 6068(m).

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

The parties waive any variance between the Notice of Disciplinary Charges filed on November 3, 2006, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was May 7, 2007.

**DISMISSALS.**

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

<b><u>Case No.</u></b>	<b><u>Count</u></b>	<b><u>Alleged Violation</u></b>
05-O-00721-RAH	1	<i>Business and Professions Code</i> , section 6106
	2	<i>Business and Professions Code</i> , section 6106
	3	<i>Business and Professions Code</i> , section 6106
	5	<i>Business and Professions Code</i> , section 6103
	6	<i>Business and Professions Code</i> , section 6068(m)
	8	<i>Rules of Professional Conduct</i> , rule 3-700(D)(2)
	9	<i>Business and Professions Code</i> , section 6106



<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-00909-RAH	11	<i>Business and Professions Code</i> , section 6103
	12	<i>Business and Professions Code</i> , section 6068(m)
05-O-00911-RAH	15	<i>Rules of Professional Conduct</i> , rule 3-510
	17	<i>Business and Professions Code</i> , section 6106

**AUTHORITIES SUPPORTING DISCIPLINE.**

Standards for Attorney Sanctions for Professional Misconduct

1) Standard 1.3 - The primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

2) Standard 1.6(a) - If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

3) Standard 2.4(b) - Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

4) Standard 2.6 - Culpability of a member of a wilful violation of *Business and Professions Code*, section 6068 shall result in suspension or disbarment depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Case Law

*Doyle v. State Bar* (1976) 15 Cal.3d 973 - In two client matters, the respondent failed to perform services for which he was hired. However, unlike the within matter, the respondent in *Doyle* also made misrepresentations to the client in one matter and failed to return unearned fees to the other. The respondent was placed on three years stayed suspension. It should be noted that the respondent in *Doyle* was given mitigating credit for candor and cooperation during the proceedings.

*Wells v. State Bar* (1984) 36 Cal.3d 199 - In two client matters, the respondent failed to

communicate and failed to perform. Respondent was given 30 days actual suspensions and two years stayed suspension as discipline. In contrast to the within matter where Respondent has no prior record of discipline, the respondent in *Wells* had a two prior impositions of discipline.

*Van Sloten v. State Bar* (1989) 48 Cal.3d 921 - In a dissolution of marriage matter, the respondent failed to communicate with and perform services competently on behalf of his client. The respondent also improperly withdrew from the matter. The respondent was placed on six months stayed suspension. It should be noted that, unlike the Respondent herein, the respondent in *Van Sloten* was given mitigating credit for having no prior discipline in more than 12 years of practice.

*In the Matter of Kopinski* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 716 - The respondent was found culpable of failing to communicate with two clients and failing to return their files to them. The respondent was placed on six months stayed suspension.

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Page #

Attachment Page 12

(Do not write above this line.)

In the Matter of <b>KENNETH P. FERIA (no. 221685)</b>	Case number(s): <b>05-O-00721, 05-O-00909, 05-O-00911</b>
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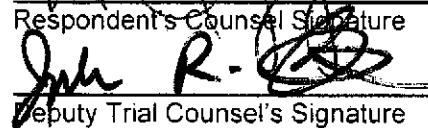
### SIGNATURE OF THE PARTIES

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 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>5-12-07</u> Date	 Respondent's Signature	<u>KENNETH P. FERIA</u> Print Name
<u>5-10-07</u> Date	 Respondent's Counsel Signature	<u>MICHAEL G. GERNER</u> Print Name
<u>5-11-07</u> Date	 Deputy Trial Counsel's Signature	<u>JOSEPH R. CARLUCCI</u> Print Name

(Do not write above this line.)

In the Matter of KENNETH P. FERIA	Case number(s): 05-O-00721, 05-O-00909, 05-O-00911
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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.

Page 15 - 6th Paragraph, 2nd Line: Delete Typo "M".

Page 18 - 2nd Paragraph, 1st Line: Add "E" to "TH".

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.)**

05-14-07  
Date

  
RICHARD A. PLATEL  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 17, 2007, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING**

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

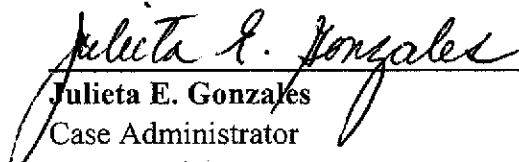
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL G GERNER ESQ  
MICHAEL G GERNER, A PROF LAW CORP  
10100 SANTA MONICA BLVD #300  
LOS ANGELES, CA 90067**

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

**Joseph R. Carlucci, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 17, 2007.

  
\_\_\_\_\_  
**Julieta E. Gonzalez**  
Case Administrator  
State Bar Court