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State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Charles T. Calix Deputy Trial Counsel 1149 S. Hil Street Los Angeles, CA 90015-2299 (213) 765-1255</p> <p>Bar # 146853</p>	<p>Case Number (s)</p> <p>05-O-01245</p>	<p>(for Court's use)</p> <p>FILED</p> <p>MAR 29 2007 <i>WJC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>David M. Ward 31441 Santa Margarita Parkway #330 Rancho Margarita Parkway, CA 92688-1836 (949) 888-2800</p> <p>Bar # 89734</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>DAVID M. WARD</p> <p>Bar # 89734</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 **November 29, 1979**.
- (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 **11** 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".



- (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 (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts 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
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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.

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- (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.

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- (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) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) Respondent must comply with the conditions attached to the reproval for a period of **two years**.
- (2) During the condition period attached to the reproval, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) 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.
- (4) 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.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproval. 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 the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (6) 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 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 monitor.
- (7) 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 conditions attached to the reprobation.
- (8) 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 Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **See Attachment.**
- (9) 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.
- (10) 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 of the effective date of the reprobation.
- No MPRE recommended. Reason: **See Attachment.**
- (11) 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:

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(Do not write above this line.)

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID M. WARD

CASE NUMBER(S): 05-O-01245

David M. Ward ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS.

On or about December 31, 2001, Respondent changed his status with the State Bar from active to inactive, and has not practiced law since that date.

In and around June 2001 through June 2005, Respondent operated a business titled "The Attorney Marketing Center," which marketed a system called "Referral Magic!" to attorneys to market their services, generate referrals, and develop new clients ("Referral Magic!"). The Attorney Marketing Center did not solicit prospective legal clients for Respondent, any member or law firm.

In a Referral Magic! advertisement that ran monthly from in or around January 2002 to in or around April 2002 in the California Bar Journal, Respondent described himself as "Southern California Lawyer" and as "Orange County sole practitioner, David M. Ward."

In a letter to "Fellow Attorney[s]" or "Fellow Lawyer[s]" posted on the Attorney Marketing Center internet cite from in or around April 2002 to in or about June 2005, Respondent described himself as "an attorney in southern California" and signed his name "Attorney at Law." His return address was listed "David M. Ward, Attorney at Law, ..."

CONCLUSIONS OF LAW.

By describing himself as an attorney: from in or around January 2002 to in or around April 2002 in a Referral Magic! advertisement in the California Bar Journal; and from in or around April 2002 to in or about June 2005 in advertisement posted on the Attorney Marketing Center internet cite; Respondent communicated information which was false and tended to confuse, deceive or mislead the public in violation of rule 1-400(D) of the Rules of Professional Conduct.

AUTHORITIES SUPPORTING DISCIPLINE.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the Supreme Court discussed the unauthorized practice of law, and held that “[s]uch practice includes the mere holding out by a layman or a suspended attorney that he is practicing or is entitled to practice law. (*In re Cadwell* (1975) 15 Cal.3d 762, 771 [125 Cal.Rptr. 889, 543 P.2d 257]; Bus. & Prof. Code, §§ 6125, 6126.)” See also, *Bluestein v. State Bar*, 13 Cal.3d 162, 175 fn. 13, quoting from *Crawford v. State Bar*, 54 Cal.2d 659, 666.

In *In re Cadwell, supra*, 15 Cal.3d at p. 771, the Court of Appeals held that “[a] member of the bar should not under any circumstances attempt to deceive another. (See *Cutler v. State Bar*, 71 Cal.2d 241, 252-253 [78 Cal.Rptr. 172, 455 P.2d 108]; *McKinney v. State Bar*, 62 Cal.2d 194, 196 [41 Cal.Rptr. 665, 397 P.2d 425].) ‘An attorney’s practice of deceit involves moral turpitude.’ ”

In the State Bar Act section on “Legal Advertising,” it provides that the term “‘Lawyer’ means a member of the State Bar or a person who is admitted in good standing and eligible to practice ...” and that “[n]o advertisement shall contain any false, misleading, or deceptive statements ...” Business and Professions Code sections 6157(b) and 6157.1.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 23, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 23, 2007, the estimated prosecution costs in this matter are approximately \$1,983. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

MITIGATING CIRCUMSTANCES.

No Prior Discipline.

Respondent was admitted to the State Bar on November 29, 1970, and his advertising violations were not deemed serious.

No Harm.

Respondent's business, The Attorney Marketing Center, did not solicit prospective legal clients for Respondent, any member or law firm; did not market legal services or even a legally related product; did not market its product to the general public; marketed its product to attorneys; and offered a money back guarantee to purchasers. None of the purchasers of the product complained to the State Bar about Respondent, the advertisement, or the product.

Candor/Cooperation/Remorse.

Respondent could not display spontaneous candor and cooperation with victims of his misconduct as there were no known victims. However, Respondent displayed candor, cooperation, and remorse during disciplinary this proceeding by immediately removing any reference to being an attorney in his advertisements once his improper use of the title attorney was demonstrated to him.

Good Faith.

Respondent acted in good faith in that he did not know at the time that he advertised himself as an attorney that only active members could describe themselves as attorneys.

STATE BAR ETHICS SCHOOL EXCLUSION.

It is recommended that Respondent be *excluded* from attending State Bar Ethics School since on or about December 31, 2001, Respondent changed his status with the State Bar from active to inactive, has not practiced law since that date, and does not anticipate practicing law in the future. Respondent agrees to provide proof of attendance of Ethics School and passage of the test given at the end of that session if he seeks to return to active status prior to or during the period of reproof.

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION EXCLUSION.

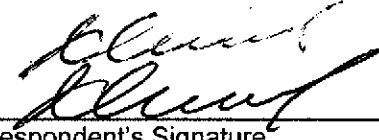
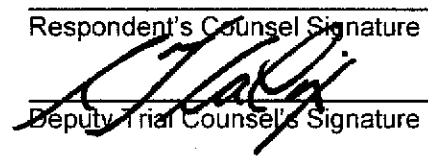
It is recommended that Respondent be *excluded* from taking and passing the Multistate Professional Responsibility Examination ("MPRE") since on or about December 31, 2001, Respondent changed his status with the State Bar from active to inactive, has not practiced law since that date, and does not anticipate practicing law in the future. Respondent agrees to provide proof of the MPRE if he seeks to return to active status prior to or during the period of reproof.

(Do not write above this line.)

In the Matter of DAVID M. WARD	Case number(s): 05-O-01245
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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>3/14/07</u> Date	 Respondent's Signature	<u>DAVID M. WARD</u> Print Name
<u>3-9-07</u> Date	 Deputy Trial Counsel's Signature	<u>CHARLES T. CALIX</u> Print Name

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In the Matter Of DAVID M. WARD	Case Number(s): 05-O-01245
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

See Attachment.

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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

3/28/07

Judge of the State Bar Court



Attachment to Order

1. On page 9 of the stipulation, under the heading, "No Prior Discipline," "November 29, 1970" is deleted, and in its place is inserted "November 29, 1979".
2. On page 9 of the stipulation, the last sentence under the heading "State Bar Ethics School Exclusion" is deleted, and in its place is inserted the following sentence:

If respondent desires to return to active status prior to or during the two year reprobation period, he must provide to the Office of Probation proof of attendance of Ethics School and passage of the test given at the end of that session prior to paying his active membership dues and returning to active status.

3. On page 10 of the stipulation, the last sentence under the heading "Multistate Professional Responsibility Examination Exclusion" is deleted, and in its place is inserted the following sentence:

If respondent desires to return to active status prior to or during the two year reprobation period, he must provide to the Office of Probation proof of passage of the Multistate Professional Responsibility Examination prior to paying his active membership dues and returning to active status.

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 March 29, 2007, I deposited a true copy of the following document(s):

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

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:

**DAVID MARTIN WARD #330
31441 SANTA MARGARITA PKWY
RANCHO SANTA MARGARITA, CA 92688**

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

CHARLES CALIX, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 29, 2007**.



Tammy R. Cleaver
Case Administrator
State Bar Court