



ORIGINAL

(Do not write above this line.)

State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar FUMIKO KIMURA DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015 Telephone: (213) 765-1380 Bar # 208763	Case number(s) 05-0-01378-RAP	(for Court's use) <div style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 18pt;">APR 28 2006</div> <div style="text-align: center; font-size: 12pt;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent JEFFREY CHARLES SWARTZLANDER 9974 SCRIPPS RANCH BLVD. #355 SAN DIEGO, CA 92131 Bar # 122210	PUBLIC MATTER	
In the Matter of JEFFREY CHARLES SWARTZLANDER Bar # 122210 A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <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 12/31/1985
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 14 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a) costs added to membership fee for calendar year following effective date of discipline
- (b) costs to be paid in equal amounts prior to February 1 for the following membership years:
for the following two membership years
(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)
- (c) costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (d) costs entirely waived

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

(1) Prior record of discipline [see standard 1.2(f)]

(a) State Bar Court case # of prior case _____

(b) Date prior discipline effective _____

(c) Rules of Professional Conduct/ State Bar Act violations: _____

(d) Degree of prior discipline _____

(e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".

(2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

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

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____
in restitution to _____ without the threat or force of disciplinary, civil or
criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(Do not write above this line.)

- (10) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation. See Attachment page 6 (page 12)
- (13) No mitigating circumstances are involved. See "Other Factors in Consideration"

Additional mitigating circumstances:

D. Discipline

1. Stayed Suspension.

(a) ~~XX~~ Respondent must be suspended from the practice of law for a period of one (1) year

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

The above-referenced suspension is stayed.

2. Probation.

Respondent is placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

(Do not write above this line.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.
- In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.
- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: _____
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

(Do not write above this line.)

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

No MPRE recommended. Reason: _____

- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Jeffrey Charles Swartzlander

CASE NUMBER: 05-O-01378-RAP

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/or Rules of Professional Conduct.

Respondent was admitted to the practice of law in the State of California on December 31, 1985, and was a member at all times pertinent to these charges.

Count One: Failure to Comply With Laws - Unauthorized Practice of Law

Facts

Respondent failed to pay the required State Bar of California membership fees for 2004, which were due in early 2004. Accordingly, on or about May 21, 2004, the Membership Records Department of the State Bar of California sent Respondent a letter informing him that he would be suspended from the practice of law if he failed to pay the required State Bar of California membership fees. The May 21, 2004 letter notified Respondent that the effective date of suspension was expected to be September 16, 2004. The letter was properly mailed to Respondent at his official State Bar membership records address. Respondent received the May 21, 2004 letter but failed to pay his membership dues.

On or about August 27, 2004, the California Supreme Court entered an order (S126962), effective September 16, 2004, suspending Respondent from the practice of law as a result of Respondent's failure to pay State Bar of California membership fees ("Supreme Court Order").

On or about August 27, 2004, the State Bar's Membership Records Department properly served a copy of the Supreme Court Order on Respondent at his State Bar membership records address. Respondent received the August 27, 2004 Supreme Court Order.

The August 27, 2004 Supreme Court Order became effective on September 16, 2004. Pursuant to the August 27, 2004 Supreme Court Order, Respondent was suspended from the practice of law from September 16, 2004 until October 15, 2004.

Respondent knew that he was suspended and therefore not entitled to practice law from September 16, 2004 until October 15, 2004.

In or about 1994, Respondent had prepared a Revocable Trust ("Trust") on behalf of Mary Masters ("Masters"). On or about September 23, 2004, Masters hired Respondent to update the Trust. On that date, Masters met with Respondent at his office to discuss the Trust updates. In addition, Masters specifically asked Respondent to make the changes to the Trust by October 23, 2004. Respondent agreed to do so.

On or about September 23, 2004, Masters paid Respondent \$375.00 in advanced legal fees to update her Trust. On or about September 24, 2004, Respondent deposited the check for \$375.00 into his bank account.

While actually suspended from the practice of law, Respondent agreed to update Masters's Trust and collected \$375.00 in advanced legal fees from Masters. Respondent failed to inform Masters that he was not an active member of the State Bar. Rather, he held himself out as an attorney entitled to practice law.

On or about October 14, 2004, Respondent issued a check to the State Bar of California for the payment of his unpaid membership dues.

On or about October 15, 2004, the State Bar of California received Respondent's check and issued a letter to Respondent informing him that his suspension had been terminated as of October 15, 2004.

Conclusions of Law

By holding himself out to Masters as entitled to practice law, by agreeing to update Masters's Trust, and by accepting an advanced fee for legal services, all when he was not an active member of the State Bar of California, Respondent held himself out as practicing or entitled to practice law when he was not an active member of the State Bar in wilful violation of Business and Professions Code sections 6125 and 6126, and thereby failed to support the laws of this State in wilful violation of Business and Professions Code section 6068(a).

Count Two: Failure to Perform with Competence

Facts

The facts listed under Count One are hereby incorporated by reference. Because Respondent was not entitled to practice law from September 16, 2004 through October 14, 2004, Respondent was not entitled to perform legal services for Masters during that period. However, Respondent

became entitled to practice law again on October 15, 2004. Respondent had agreed to complete the updates to Masters' Trust by October 23, 2004. However, even after Respondent became entitled to practice law again, he failed to perform the legal services he had agreed to perform for Masters.

Between on or about September 23, 2004 and on or about October 23, 2004, Masters called Respondent at his office nine times, leaving messages each time asking Respondent to return her calls regarding her matter. Respondent received the messages but failed to return any of Masters's calls.

By on or about October 27, 2004, Masters had neither heard from Respondent nor received an updated Trust from him. Accordingly, on or about October 27, 2004, Masters sent a letter to Respondent addressing his failure to perform and failure to return her telephone calls. In her October 27, 2004 letter, Masters advised Respondent that she had to hire a new attorney to update her Trust. In addition, in the October 27, 2004 letter, Masters requested a refund of the \$375.00 in advanced attorney fees. The letter was mailed, via the United States Postal Service, certified mail - return receipt requested, postage prepaid in an envelope addressed to Respondent at his State Bar membership address. On or about October 29, 2004, Respondent received the letter but failed to respond.

On or about March 23, 2005, Masters e-mailed Respondent at his e-mail address, lawyerjeff@aol.com. In the March 23, 2005 e-mail, Masters asked Respondent to return her file. Respondent received the e-mail but failed to respond.

On or about June 23, 2005, Masters sent another letter to Respondent in which she again asked Respondent to return her file and refund the fees by July 7, 2005. The letter was mailed, via the United States Postal Service, first class postage prepaid in an envelope addressed to Respondent at a State Bar Membership address. The letter was not returned as undeliverable or for any other reason. Respondent received the June 23, 2005 letter but failed to respond.

Conclusions of Law

By failing to update Masters's trust by October 23, 2004 as he agreed to do when he was hired and by failing to perform any legal services on Masters's behalf even after he became entitled to practice law again on October 15, 2004, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Count Three: Failure to Release File

Facts

The facts under Count Two are incorporated by reference. On or about November 22, 2005, Respondent returned the client file to Masters after the Notice of Disciplinary Charges was filed against him. Despite Masters' requests, Respondent failed to promptly release the client file to Masters upon termination of employment.

Conclusions of Law

By not promptly releasing the client file to Masters despite her requests, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers, in wilful violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

Count Four: Failure to Refund Unearned Fees

Facts

The facts under Count Two are incorporated by reference. By ceasing all communication with Masters and by failing to perform any services on her behalf, Respondent did not earn any of the fees paid by Masters. In or about January 2005, Masters submitted a complaint to the State Bar of California regarding Respondent's failure to perform, failure to communicate, failure to turn over the file and failure to return unearned fees. State Bar investigator Sandra Burnett first contacted Respondent about the complaint received from Masters in or about April 2005.

On or about August 31, 2005, approximately four months after the State Bar had notified him of Masters's complaint, Respondent issued a check to Masters for \$412.50 as a refund of the \$375.00 in unearned fees plus interest.

Conclusions of Law

By not timely refunding the \$375.00 in unearned fees to Masters despite her requests, Respondent failed to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Count Five: Failure to Respond to Client Inquiries

Facts

The facts under Count Two are incorporated by reference. Respondent failed to communicate

with Masters at any time after September 23, 2004 when she hired him until he refunded her unearned fees in August 2005.

Conclusions of Law

By failing to respond to Masters's letters, telephone calls and email, Respondent failed to respond to Masters's reasonable status inquiries, in wilful violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS

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

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 7, 2006, the estimated prosecution costs in this matter are approximately \$2,296.00. Respondent acknowledges that this figure is an estimate only. 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.

AUTHORITIES SUPPORTING DISCIPLINE

Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California ("Standard")

Standard 1.3 states that the primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Standard 2.4 (b) provides that 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. Respondent failed to update the Trust for Masters and failed to respond to Masters' inquiries thereafter despite her numerous attempts to contact Respondent. As a result, Masters was forced to retain a new attorney to update her Trust.

Standard 2.6 (a) provides that a violation of the Business and Professions Code, section 6068 shall result in disbarment or suspension 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. Respondent wilfully violated sections 6125 and 6126 of the Business and Professions Code, and thus failed to support the laws of this State in wilful violation of Business and Professions Code section 6068(a), by holding himself out to Masters as entitled to practice law, by agreeing to update Masters' Trust, and by accepting an advanced fee for legal services, all when he was not an active member of the State Bar.

Standard 2.10 states that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to 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. Respondent failed to refund unearned fees when requested by Masters and did not refund the unearned fees until after the State Bar investigator contacted Respondent. Respondent also failed to return the client file to Masters when requested and did not return the file until after the Notice of Disciplinary Charges was filed.

Case Law

Van Sloten v. State Bar (1989) 48 Cal.3d 921. The respondent was found culpable of a single act of failing to perform services without serious consequences to his client and received a six-month stayed suspension with one year probation. The respondent was admitted in 1977 and had no prior record of discipline.

OTHER FACTORS IN CONSIDERATION

Respondent was admitted to the practice of law in California on December 31, 1985 and he has no prior disciplinary record.

On November 23, 2005, the State Bar met with Respondent regarding this matter. Respondent acknowledged that he was culpable of all charges as he did in his response to the NDC. Respondent was extremely remorseful and stated that he should not have done what he did to Masters.

Respondent refunded the unearned fees plus interest to Masters before the Notice of Disciplinary Charges was filed.

(Do not write above this line.)

In the Matter of JEFFREY CHARLES SWARTZLANDER	Case number(s): 05-0-01378-RAP
--	-----------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

April 4, 2006 *Jeffrey Charles Swartzlander* JEFFREY CHARLES SWARTZLANDER
Date Respondent's signature Print name

None Respondent's Counsel's signature Print name

4-6-06 *[Signature]* FUMIKO KIMURA
Date Deputy Trial Counsel's signature Print name

(Do not write above this line.)

In the Matter of JEFFREY CHARLES SWARTZLANDER	Case number(s): 05-0-01378-RAP
--	-----------------------------------

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

04-18-06
Date


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 April 28, 2006, I deposited a true copy of the following document(s):

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

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

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

**JEFFREY CHARLES SWARTZLANDER
9974 SCRIPPS RANCH BLVD # 355
SAN DIEGO, CA 92131**

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

FUMIKO KIMURA , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 28, 2006**.



Johnnie Lee Smith
Case Administrator
State Bar Court