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State Bar Court of California Hearing Department San Francisco		
Counsel For The State Bar Maria J. Oropeza Office of the Chief Trial Counsel 180 Howard Street, San Francisco, CA, 94105 (415) 538-2569 Bar # 182660	Case Number (s) 05-O-2794	(for Court's use) <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED </div> <div style="text-align: center; font-weight: bold;">AUG 28 2008</div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent Doron Weinberg 523 Octavia Street, San Francisco, CA 94102 (415) 431-3472 Bar # 46131	Submitted to: Assigned Judge	
In the Matter Of: Lawrence Niermeyer Bar # 157440 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING 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 December 20, 1991.
- (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 17 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."



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- (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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - 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.
- (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.

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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
- (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 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:

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(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **sixty days**.

- 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:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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.

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- (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 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.

- (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 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.
- (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 probation conditions.
- (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:
- (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) 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 checked="" 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 during the period of actual suspension or within one year, whichever period is longer. **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) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

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- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

- (5) **Other Conditions:**

In the Matter of Lawrence Niermeyer	Case number(s): 05-O-02794
A Member of the State Bar	

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below: Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Financial Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Lawrence Niermeyer, Bar No. 157440
CASE NUMBER(S): 05-O-02794 ET AL.

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 AND CONCLUSIONS OF LAW.

General Background

1. Lawrence Niermeyer ("respondent") was admitted to the practice of law in the State of California on December 20, 1991, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2. In July 1996, Todd Price hired respondent to represent him in a dissolution of marriage action against Mr. Price's then wife, Shelia Price, in a matter entitled, *In re Marriage of Price*, Placer County Superior Court Case No. SCV-16163. The original fee agreement required Mr. Price to pay respondent \$150 an hour for his services in that matter.

3. On July 20, 1997, Mr. Price filed a lawsuit against his neighbors, David and Cathy Reuter, in a matter entitled, *Price v. Reuter*, Placer Superior Court Case No. SCV 6005.

4. In July 1997, Mr. Price hired respondent to represent him in the *Price v. Reuters* matter.

5. From 1997 through December 1999, respondent performed services for Mr. Price in the dissolution of marriage action.

6. On February 22, 2000, Mr. Price substituted attorney Jon Lydell in place of respondent in the dissolution of marriage matter.

Statement of Facts: Count One (Case No. 05-O-02794)

7. Respondent wilfully violated Rules of Professional Conduct, rule 3-300, by entering into a business transaction with a client or knowingly acquiring an ownership, a possessory, a security, or a pecuniary interest adverse to a client without complying with the requirements the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the

client thereafter consented in writing to the terms of the transaction or acquisition, as follows:

8. In July 1997, respondent agreed to accept in lieu of attorney's fees two military Japanese pieces from Mr. Price.
9. Respondent received a Japanese Helmet and hand sword guard from Mr. Price.
10. Both parties agreed that the value of the military items would be applied to Mr. Price's attorney's fees in both the marital dissolution matter and the Reuter Matter.
11. Neither respondent nor Mr. Price took the items to be evaluated by an expert, because both of them were familiar with and collected Japanese military items.
12. The parties agreed that the hand sword guard would be valued at approximately \$1,500.00 and the helmet would be valued at approximately \$2,500 to \$3,500.00.
13. Respondent applied the value of the helmet to the Reuter matter attorney's fees and the value of the hand sword guard to the marital dissolution matter.
14. The transaction or acquisition and its terms were not transmitted in writing to Price in a manner which should reasonably have been understood by the Mr. Price.
15. Respondent failed to advise Mr. Price in writing that he should seek the advice of an independent lawyer of Price's choice to review the terms of the transaction.
16. Mr. Price did not consent in writing to the terms of the transaction or acquisition.

Conclusions of Law: Count One (Case No. 05-O-02794)

17. By accepting the Japanese helmet and Japanese sword hand guard in lieu of attorney's fees, respondent entered into a business transaction with a client or knowingly acquired an ownership, a possessory, a security, or a pecuniary interest adverse to a client without complying with the requirements that the transaction or acquisition and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; the client was given a reasonable opportunity to seek that advice; and the client thereafter consented in writing to the terms of the transaction or acquisition, a wilful violation of Rule 3-300.

Statement of Facts: Count Two (Case No. 05-O-02794)

18. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as follows:

19. On February 18, 1998, the trial in the *Price v. Reuter* matter was held. Respondent represented Mr. Price at the trial.

20. After hearing the matter, the court issued a permanent injunction against Mr. Reuter, requiring him (1) to stop alarming, annoying, or harassing Mr. Price and listed members of his household, (2) ordered Mr. Reuter to stay 25 yards from the protected persons at all times

and 5 yards from the boundary of the protected persons; (3)denied the request to issue an injunction against Mrs. Reuter; and (4)awarded Mr. Price the sum of \$2186.50 in attorney's fees and costs.

21. On March 4, 1998, the court filed a judgement against Mr. and Mrs. Reuter for \$2,186.50, which included the \$1,500 award and \$686 in costs.

22. On April 2, 1998, respondent entered into an agreement with the Reuters to accept \$50 a month in payments from the Reuters to be credited against the \$2,186.50 judgement.

23. Respondent also agreed that the Reuters would send their checks directly to respondent the first of every month until the award is paid.

24. Respondent advised the Reuters' attorney that Mr. Price agreed to take no collection or enforcement action so long as the Reuters continue to make regular monthly payments until the award was fully paid.

25. Subsequently, the Reuters failed to pay their monthly installments. Instead, they made irregular payments to respondent from on or about October 5, 1998 through October 18, 2004.

26. Respondent, however, failed to commence any collection or enforcement actions against the Reuters, despite the Reuters violating the agreement to make monthly payments.

27. From October 5, 1998 through October 18, 2004, respondent received irregular payments from the Reuters, totaling \$2,650, on Mr. Price's judgement. The Reuters sent respondent about 20 payments.

28. Except for the first two payments received, respondent failed to notify Mr. Price that respondent had received funds from the Reuters in payment of the judgement that Mr. Price received against them.

29. Upon receiving each of the payments, totaling \$2,650, respondent failed to deposit these funds into a client trust account and failed to distribute these funds to Mr. Price.

Conclusions of Law: Count Two (Case No. 05-Q-02794)

30. By failing to deposit the funds received on behalf of Mr. Price from the Reuters into respondent's client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, a wilful violation of Rule 4-100(A).

Statement of Facts: Count Three (Case No. 05-O-02794)

31. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(1), by failing to promptly notify a client of funds received for that client, as follows:

32. The allegations contained in Count Two of this stipulation are herein incorporated by reference as if they were set forth in full.

33. Subsequent to receiving the funds from the Reuters, respondent failed to advise

Mr. Price that he had received funds from the Reuters in payment of the judgment in Mr. Price's favor, except for the first two payments, which respondent did inform Mr. Price that he had received.

Conclusions of Law: Count Three (Case No. 05-O-02794)

34. By failing to advise Mr. Price of the receipt of the funds, respondent wilfully failed to notify his client of the receipt of funds on the client's behalf, a wilful violation of Rule 4-100(B)(1).

Statement of Facts: Count Five (Case No. 05-O-02794)

35. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in respondent's possession which the client is entitled to receive, as follows:

36. The allegations contained in counts two and three of this stipulation are herein incorporated by reference as if they were set forth in full.

37. Subsequent to receiving the funds from the Reuters, respondent failed to disburse the funds to Mr. Price.

38. He also failed to file a satisfaction of judgement, even though the Reuters had paid more than the \$2,186.50 judgement.

39. In September 2004, Mr. Price, having not received any funds on the judgement against the Reuters and thinking they had not paid the funds, hired Mr. Lydell to collect on the judgement.

40. Subsequently, Mr. Lydell filed an abstract of judgement, against the Reuters even though unbeknownst to him respondent had received sufficient funds to pay off the judgement.

41. When Mr. Lydell contacted the Reuters' attorney he was told that they had made full payment.

42. Subsequently, Mr. Lydell contacted respondent, who asserted that he had applied the funds to fees he was owed.

43. Subsequently, Mr. Lydell requested the \$2,650 that respondent had received from the Reuters on Mr. Price's behalf. Respondent failed to disburse the funds to Mr. Lydell.

44. Mr. Price ultimately settled the Reuters collection matter by agreeing to file a satisfaction of judgement, even though Mr. Price had not received any funds that the Reuters had paid.

45. On March 4, 2005, after Mr. Lydell had resolved the issue with the Reuters for Mr. Price, Mr. Lydell filed on behalf of Mr. Price a Complaint for Breach of Covenant of Good Faith and Fair Dealing; Accounting, and Conversion. Subsequently, respondent defaulted and on April 12, 2005, the court entered respondent's default for \$4,001.21, including \$3,578.71 in damages and \$422.50 in costs.

46. Subsequently, respondent attempted to file a demurrer and to have the default set

aside. The demurrer was stricken because of the default entry and the motion to set aside the default was denied.

Conclusions of Law: Count Five (Case No. 05-O-02794)

47. By failing to distribute the funds respondent received on behalf of Mr. Price, despite Mr. Lydell's request that respondent distribute those funds to Mr. Price, respondent failed to pay promptly, as requested by a client, any funds in respondent's possession which the client is entitled to receive, a wilful violation of Rule 4-100(B)(4).

Statement of Facts: Count Seven (Case No. 05-O-02794)

48. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to pay promptly, as requested by a client, any funds in respondent's possession which the client is entitled to receive, as follows:

49. In July 1996, Todd Price hired respondent to represent him in a dissolution of marriage action against Mr. Price's then wife, Shelia Price, in a matter entitled, *In re Marriage of Price*, Placer County Superior Court Case No. SCV-16163. The original fee agreement required Mr. Price to pay respondent \$150 an hour for his services in that matter.

50. From 1997 through December 1999, respondent performed services for Mr. Price in the dissolution of marriage action.

51. On December 3, 1999, respondent sent Mr. Price an invoice for services rendered on the marital dissolution matter. The invoice showed a credit in the sum of \$633.50.

52. Respondent did not provide the credit to Mr. Price, upon termination of his legal services.

Conclusions of Law: Count Seven (Case No. 05-O-02794)

53. By failing to refund to Mr. Price any portion of the \$633.50, respondent wilfully failed to promptly refund unearned fees, a wilful violation of Rule 3-700(D)(2).

Statement of Facts: Count Eight (Case No. 05-O-02794)

54. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

55. Respondent advised the Reuters' attorney that Mr. Price agreed to take no collection or enforcement action so long as the Reuters continue to make regular monthly payments until the award was fully paid.

56. Subsequently, the Reuters failed to pay their monthly installments. Instead, they made irregular payments to respondent from on or about October 5, 1998 through October 18,

2004.

57. Respondent, however, failed to commence any collection or enforcement actions against the Reuters, despite the Reuters violating the agreement to make monthly payments.

58. From October 5, 1998 through October 18, 2004, respondent received irregular payments from the Reuters, totaling \$2,650, on Mr. Price's judgement. The Reuters sent respondent about 20 payments.

59. Upon receiving the total sum of \$2,650.00 from the Reuters, respondent failed to file the satisfaction of judgement.

Conclusions of Law: Count Eight (Case No. 05-O-02794)

60. By failing to take any action to enforce the award against the Reuters when they failed to make regular monthly payments, by failing to file a satisfaction of judgement when the Reuters paid off the judgement, respondent repeatedly failed to perform legal services with competence a wilful violation of Rule 3-110(A)..

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 8, 2008.

DISMISSALS.

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-2794	Four	Business and Professions Code Section 6106
05-O-2794	Six	Business and Professions Code Section 6106

The parties waive any variance between the Notice of Disciplinary Charges filed on August 23, 2007 and the statement of facts and conclusions of law contained in this stipulation of facts.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 8, 2008, the costs in this matter are \$4008.00. 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.

Standard 2.2(b) states culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, none of which result in a wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances

Standard 2.8 states culpability of a member of a wilful violation of rule 3-300 shall result in suspension unless the extent of the member's conduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

Standard 1.6(a) states in pertinent part "the appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct 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.

The Supreme Court has long held that an attorney may not withhold funds belonging to his client in the absence of proper authorization, even if the attorney is entitled to reimbursement for his or her services. (See *McKnight v. State Bar*, supra, 53 Cal.3d at 1037; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358; *Brody v. State Bar* (1974) 11 Cal.3d 347, 350, fn. 5; *Silver v. State Bar* (1974) 13 Cal.3d 134, 146, fn. 8.)

In *Sugarman v. State Bar* (1990) 51 Cal.3d 609, 616-617, the California Supreme Court held that a client's loan to an attorney in lieu of attorney fees invokes the provisions of former rule 5-101, the predecessor to current rule 3-300. (See also *Ritter v. State Bar* (1985) 40 Cal.3d 595.) Further, the Supreme Court has long held that all dealings between an attorney and his client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for any unfairness. (*Hawk v. State Bar* (1988) 45 Cal.3d 589, 598)

In the Matter of Lais (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, rule 3-700(D)(2) requires an attorney to refund any unearned part of an advanced fee promptly upon the termination of his services. The Gutierrezes had retained Lais on May 22, 1992 and terminated his services on May 27, 1992, but he failed to send them a refund until August 7, 1992, after they had complained to the State Bar. The Review Department concluded that Lais had wilfully violated Rule 3-700(D)(2).

In the Matter of Bach, (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 631, the Review

Department stated that a finding of failure to return unearned advanced fee upon termination of employment was legally independent of the validity of a related fee arbitration award. Where respondent took an advance fee, failed to complete the work, was discharged by the client, agreed to return the unearned portion of the fee, and then failed to do so, respondent was culpable of misconduct notwithstanding alleged defects in a subsequent fee arbitration proceeding.

In the Matter of Lazarus (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 387, the Review Department found that Lazarus had failed to inform the client of receipt of funds and failed to render appropriate accounts. Lazarus had received a check for partial settlement, he promptly deposited the funds into his client trust account, but failed to notify his client. A year later he withdrew from the case, and unilaterally determined to apply the funds to the attorney's fees and costs which were the subject of a lien agreement with the client. He informed new counsel of the funds he was holding, but never informed his client nor did he provide her with an appropriate accounting.

In the Matter of Brockway (Review Dept. 2006) 4 Cal State Bar Ct. Rptr. 944, the Review Department found the obligation to render appropriate accounts to the client, does not require as a predicate that the client demand such an accounting.

In the Matter of Kroff (Review Dept. 1998) 3 Cal State Bar Ct. Rptr. 838, the Review Department stated that where a client asks an attorney to distribute funds claimed by the client and where the attorney claims an interest in the funds, the attorney violates Rule 4-100(B)(4) if he or she does not promptly take appropriate substantive steps to resolve the dispute in order to disburse the funds.

MITIGATING CIRCUMSTANCES.

No prior discipline history: Respondent has no prior imposition of discipline and has been admitted into practice since December 20, 1991.

STATE BAR ETHICS SCHOOL.


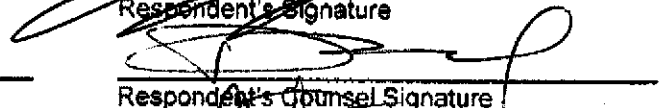
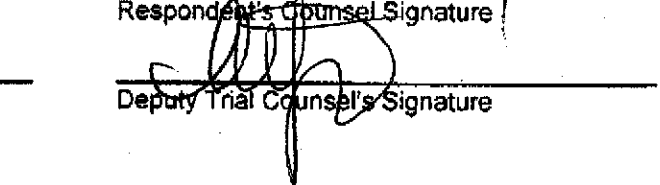
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of Lawrence Niermeyer	Case number(s): 05-O-02794
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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>7/15/08</u> Date		<u>Lawrence Niermeyer</u> Print Name
<u>8/2/08</u> Date		<u>Doron Weinberg</u> Print Name
<u>8/9/08</u> Date		<u>Maria J. Oropeza</u> Print Name

(Do not write above this line.)

In the Matter Of Lawrence Niermeyer	Case Number(s): 05-O-02794
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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:

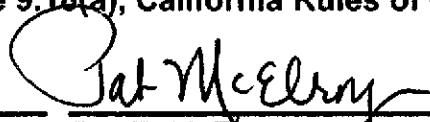
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 5, section E(1)—the "X" in the box is deleted as there is no condition in this matter that would allow the respondent to be actually suspended for two years or more. Respondent's stayed suspension is less than two years and his actual suspension is 60 days.

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 9.18(a), California Rules of Court.)**

August 22, 2008

Date


Pat E. McElroy
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 San Francisco, on August 28, 2008, 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:

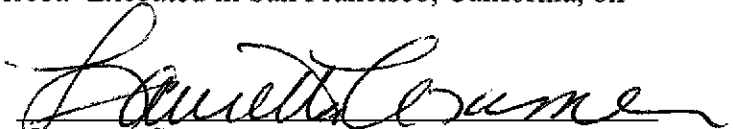
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DORON WEINBERG
523 OCTAVIA ST
SAN FRANCISCO, CA 94102

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

MARIA J. OROPEZA , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 28, 2008.


Laretta Cramer
Case Administrator
State Bar Court