


(Do not write above this line.)

State Bar Court of California  
Hearing Department  
San Francisco

**PUBLIC MATTER**

**PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES**

<p>Counsel For The State Bar</p> <p><b>Mark Hartman</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA Telephone: (415) 538-2558</p> <p>Bar # 114925</p>	<p>Case Number (s)</p> <p>05-O-03488 07-O-13146</p> <p><b>FILED</b> <i>R</i></p> <p>NOV 30 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court's use)</p> <p><del>CONFIDENTIAL</del></p> <p><b>LODGED</b> <i>EDS</i></p> <p>MAY 18 2008</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Thomas W. Pack</b> 1567 Park Ridge Drive San Jose, CA 95118 Telephone: (408) 275-9333</p> <p>Bar # 144236</p>	<p>Submitted to: <b>Program Judge</b></p> <p><b>STIPULATION RE FACTS AND CONCLUSIONS OF LAW</b></p>	
<p>In the Matter Of:</p> <p><b>THOMAS W. PACK</b></p> <p>Bar # 144236</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p> <p>kwiktag® 035 130 328</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:**

- Respondent is a member of the State Bar of California, admitted **December 11, 1989**.
- The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **10** pages, excluding the order.
- A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Do not write above this line.)

- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See page 8.**
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

None

**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. **See page 9.**
- (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. **See page 9.**
- (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:**

**See page 9.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

In the Matter of:       **Thomas W. Pack**  
Membership No.:       144263  
Case Nos.:               **05-O-0348 and 07-0-13146**

**FACTS**

Respondent admits that the following facts are true:

**State Bar Case No. 05-O-03488 (Rymer):**

**Facts:**

1. On July 16, 2001, Danny Rymer ("Rymer") retained the Law Offices of Silvano Miracchi to represent him in a personal injury suit. The Law Office of Silvano Miracchi assigned the matter to respondent for prosecution.
2. On January 23, 2003, opposing counsel Susan Grey ("Grey") served respondent with form interrogatories, set number one. Respondent was to respond to the form interrogatories within 30 days plus 5 days for mailing. Respondent did not respond to the form interrogatories within the 35 day period.
3. On May 14, 2003, Grey propounded a second round of discovery to respondent. Respondent received the discovery and did not timely respond.
4. Subsequently two extensions of time to respond were granted. Respondent met the extended deadline of July 20, 2003.
5. On November 18, 2003, Grey filed a Notice of Motion and Motion to Compel Answers to Form Interrogatories Set One and Request for Monetary Sanctions. Respondent was properly served with the Motion and did not respond to the motion.
6. On December 5, 2003, the Court granted Grey's motion to compel and issued sanctions in the amount of \$500.00. A final order was filed on December 17, 2003.
7. On December 30, 2003, respondent responded to the first set of interrogatories.

8. On April 6, 2004, an order granting Grey's motion to compel and the issuance of sanctions in the amount of \$500.00 was filed.

9. On July 16, 2004, Grey served respondent with a Demand to Exchange List of Expert Witnesses and a Demand for Production of Reports and Writings. Respondent received the demand, but did not timely respond. On September 27, 2004, he belatedly responded.

10. On September 10, 2004, respondent discovered by way of a phone call from Grey that he demand to exchange expert witness info had been filed in Rymer's client file without respondent's knowledge.

11. On June 2, 2004, the court served a Notice Re Trial and Settlement Conference, which initially set the trial date for September 27, 2004. On September 21, 2004, Grey filed and served respondent with a Motion to Exclude Expert Testimony and to Reinstate the Jury, to Deem Admissions and Exclude Evidence Not Produced During Discovery. Respondent received the motion and did not respond.

12. On September 27, 2004, Grey filed and served the defendant's trial brief in the matter. Respondent received the brief.

13. On September 27, 2004, Grey filed and served on respondent several motions in limine, addressing the exclusion of expert testimony, reinstatement of the jury, deem admissions admitted, and to exclude evidence not produced during discovery. Respondent received all four motions in limine and did not file a response.

14. On September 28, 2004, the day of trial, the court heard the matter in chambers at 9:00 a.m., because respondent was tardy. The Court resumed the matter at 11:20 a.m. In that session respondent filed in open court an ex parte application to continue the trial date and to allow the exchange of expert witness information. In his request, respondent informed the court that he had been unaware of the demand to exchange expert witness testimony until he had received a phone call from opposing counsel around September 10, 2004. The court denied respondent's ex parte application. Respondent also moved to disqualify the judge hearing the matter. The matter was transferred to the Honorable Judge Michael Fields for trial as to damages, given that the defendant admitted liability.

15. On September 28, 2004, at 11:50 a.m., the trial began. On September 29, 2004, the court entered judgement in favor of the defendant and stated the following:

Well, I have been a judge for a fair amount of time--25 years to be exact, I can't recall having seen a case more poorly prepared on behalf of a plaintiff that may have otherwise have had a legitimate cause of action. And I don't know--I'm not privy to the reasons for that lack of preparation, but it is disturbing to say the least. We have a case where liability has been admitted, where defense counsel's client pulled out in front of plaintiff. And that plaintiff, through no wrong-doing that has been indicated or alluded to collided with the defendant's car. Plaintiff,

therefore, has, at least on the face of it, a colorable cause of action. Now, the problem is that is essentially where it stops. It stops with a colorable cause of action because we have no evidence to substantiate any claims that are made. We have no evidence about what the medical treatment was, what the necessary and proper treatment was, what the cost of the treatment was, what the lost wages are.

16. Respondent alleges that his own health was deteriorating when he represented Rymer and that he did not dedicate enough time to Rymer's case because of ill health.

17. Respondent did not inform Rymer that respondent's own health crisis was impacting Rymer's case. Nor did respondent inform Rymer that he had the option of seeking new counsel.

18. Respondent did not timely respond to defense counsel's propounded discovery, did not timely exchange expert witness information, and did not properly prepare for trial.

**Case No. 07-O-13146 (Violation of ALD):**

19. At all times mentioned herein, the State Bar of California was the agency charged with attorney discipline in the State of California.

20. On June 28, 2006, respondent signed a written agreement in lieu of disciplinary prosecution (ALD) to resolve case number 05-O-03488. Respondent also agreed that the ALD would have the following effect:

1. Business and Professions Code section 6068(l) provides that it is the duty of any attorney 'to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.' Any conduct by the respondent within the effective period of this agreement which violates this agreement may give rise to prosecution for violation of Business and Professions Code section 6068(l) in addition to prosecution for the underlying allegations.

2. The facts stipulated to as to the underlying misconduct are binding upon the respondent, and the Stipulation as to Facts and Agreement in Lieu of Discipline, while confidential, may be admitted as evidence without further foundation at any disciplinary hearing held in conjunction with respondent's failure to comply with the conditions of this agreement.

3. Should respondent comply fully with the terms and conditions of this agreement as specified herein, the matter(s) referenced herein will thereafter be closed by the State Bar and the State Bar agrees that it will be precluded from reopening the referenced matters for any reason other than as stated in this agreement.

21. As consideration for this agreement, respondent promised to comply with the following conditions for a period of one year:

### **MULTI-STATE PROFESSIONAL RESPONSIBILITY EXAMINATION**

Respondent shall, within one (1) year of the execution of this agreement by all parties, take and pass the Multi-State Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners and provide satisfactory proof of such passage to the Probation Unit, State Bar Court, within said year.

### **STANDARD CONDITIONS**

That during the effective period of this agreement, respondent shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the conditions of this agreement are in effect, in writing, to the Probation Unit, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided, however, that if the effective date of this agreement is less than thirty (30) days preceding any of said dates, Respondent shall file said report on the due date next following the due date after said effective date):

- (a) in respondent's first report, that respondent has complied with all provisions of the State Bar Act and Rules of Professional Conduct since the effective date of said agreement;
- (b) in each subsequent report that respondent has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period;
- (c) provided, however, that a final report shall be filed covering the remaining portion of the effective period of this agreement following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) thereof.

### **STATE BAR ETHICS SCHOOL**

Within one (1) year of the date of the execution of this agreement by all parties, Respondent shall attend the State Bar Ethics School, which is held periodically at the State Bar of California (180 Howard Street, San Francisco) and shall take and pass the test given at the end of such session. Because Respondent has agreed to attend State Bar Ethics School as part of this Agreement in Lieu of Discipline, Respondent may receive

Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

22. The ALD became effective On July 3, 2006 when it was executed by a representative of the Office of the Chief Trial Counsel, and it remained in full force and effect during the following year. At all times after July 3, 2006, respondent knew or reasonably should have known that the ALD had become effective. Respondent received actual knowledge that the ALD had become effective in or about late July 2006.

23. During the year in which the ALD was effective, respondent violated each of the above-mentioned conditions of his ALD. Specifically, respondent failed to either take or pass the MPRE, failed to submit any of the required reports, and failed to attend Ethics School.

## **CONCLUSIONS OF LAW**

Respondent admits that the following conclusions of law are true:

### **State Bar Case No. 05-O-03488 (Rymer):**

1. Respondent admits that he intentionally or recklessly failed to provide competent legal services to Rymer insofar as (1) he did not respond timely to all propounded discovery, (2) he did not exchange expert witness information, (3) he did not respond to defendant's motions, and (4) he did not properly prepare for trial. Thus, he wilfully violated rule 3-110(A) of the Rules of Professional Conduct.

2. Respondent admits that he failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client's rights insofar as (1) he did not inform Rymer that his health problems impaired his ability to represent Rymer and (2) he did not move to withdraw. Thus, he wilfully violated rule 3-700(A)(2) of the Rules of Professional Conduct.

### **Case No. 07-O-13146 (Violation of ALD):**

3. Respondent admits that by violating the conditions of his ALD, he failed to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline. Thus, he wilfully violated section 6068, subdivision (1) of the Business and Professions Code section.

## **AGGRAVATING CIRCUMSTANCE**

Multiple Acts of Misconduct: By the misconduct stipulated to above, respondent committed multiple acts of misconduct.



## **MITIGATING CIRCUMSTANCES**

No Prior Record of Discipline: Although the misconduct stipulated to herein is serious, respondent has no prior record of discipline since his admission to practice law in California in 1989.

Candor and Cooperation: Respondent has been candid and cooperative with the State Bar in resolving this matter.

## **ADDITIONAL MITIGATING CIRCUMSTANCES**

Mental Health Problems and Treatment: Beginning in 2003, respondent experienced mental health problems, for which he voluntarily sought mental health treatment, before the intervention of the State Bar.

Participation in the State Bar's Lawyer Assistance Program: In August 2007, respondent contacted the State Bar Lawyer Assistance Program ("LAP"). He completed the LAP intake process and underwent evaluation. On February 15, 2008, he signed a participation plan with LAP. He is currently in compliance with the plan's requirements.

## **DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING**

On April 24, 2008, the State Bar faxed a disclosure letter to respondent. In this letter, the State Bar advised respondent of any pending investigation or proceeding not resolved by this Stipulation re Facts and Conclusions of Law.

(Do not write above this line.)

In the Matter of  THOMAS W. PACK	Case number(s):  05-O-03488 07-O-13146
--	---

### SIGNATURE OF THE PARTIES

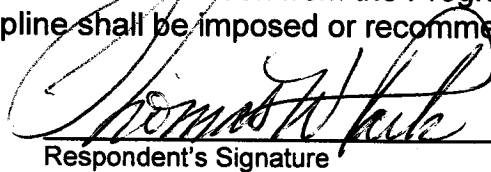
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

28 Apr 2008  
Date

  
Respondent's Signature

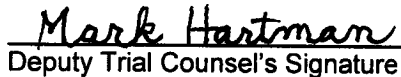
THOMAS W. PACK  
Print Name

1  
Date

\_\_\_\_\_  
Respondent's Counsel Signature

\_\_\_\_\_  
Print Name

4/28/08  
Date

  
Deputy Trial Counsel's Signature

MARK HARTMAN  
Print Name

(Do not write above this line.)

In the Matter Of  <b>THOMAS W. PACK</b>	Case Number(s):  <b>05-O-03488</b> <b>07-O-13146</b>
---	---

**ORDER**

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

- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

5.19.08  
Date

*Jay A. Armendariz*  
Judge of the State Bar Court  
*Lvt Armendariz*