

State Bar Court of California
Hearing Department
San Francisco

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In the Matter Of:
Robert Allen Martin

Bar # 62018

A Member of the State Bar of California
(Respondent)

Case Number (s)
05-O-4152-PEM

(for Court's use)

PUBLIC MATTER

FILED

MAY 24 2007

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Submitted to: **Settlement Judge**

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

ACTUAL SUSPENSION

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 18, 1974**.
- (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 **10** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- 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: **2008, 2009, 2010**
(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 **S014281(86-O-18755)**
 - (b) Date prior discipline effective **March 8, 1988**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code, sections 6068, 6103; Rules of Professional Conduct, rules 2-111(A)(2), 6-101(2)**
 - (d) Degree of prior discipline **Private reproof, ordered to pass MPRE within one year**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.

Effective June 29, 1990, in case number 89-H-11089, respondent was suspended for six months, execution stayed, and placed on probation for one year for his failure to timely pass the MPRE as he had stipulated to in 86-O-18755, in violation of Rules of Professional Conduct, rule 9-101, and Business and Professions Code, sections 6068(a) and 6103.
- (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.

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Additional mitigating circumstances

Respondent refunded complaining witness John Lindner's advanced fees in full, plus 10% interest, in April 2007.

D. Discipline:

(1) **Stayed Suspension:**

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

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California 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

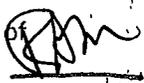
ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

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 

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the 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 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.



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- 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.
- (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:**

RESTRICTIONS WHILE ON ACTUAL SUSPENSION.

1. During the period of actual suspension, respondent shall not:

- (1) Render legal consultation or advice to a client;
- (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
- (3) Appear as a representative of a client at a deposition or other discovery matter;
- (4) Negotiate or transact any matter for or on behalf of a client with third parties;
- (5) Receive, disburse, or otherwise handle a client's funds;
- (6) Engage in activities which constitute the practice of law;
- (7) Hold himself out as entitled to practice law or allow someone else to hold respondent out as entitled to practice law. This expressly includes advertising, including but not limited to Internet and/or website advertising. This also includes using the terms, "Esq.," "Attorney," "Counselor at Law," and "Lawyer" and other terms commonly reserved for active members of the State Bar.

2. Respondent shall declare under penalty of perjury that he has complied with this provision in any quarterly report required to be filed with the Office of Probation, pertaining to periods during which respondent is actually suspended from the practice of law.



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Attachment language begins here (if any):

FACTS AND CONCLUSIONS OF LAW

Facts

1. On August 20, 2004, John Lindner ("Lindner") employed respondent to seek the reinstatement of his driver's license. On or about August 20, 2004, and on or about August 27, 2004, Lindner paid with two checks to respondent totaling \$1,500 as advanced fees for his services. Respondent did not execute a written fee agreement with Lindner.
2. From September 2004 through December 2004, Lindner spoke to respondent several times regarding the status of his case. Respondent assured Lindner that his case was "sitting on the judge's desk" waiting to be reviewed.
3. However, respondent had not filed any pleadings with any court on behalf of Lindner to seek Lindner's reinstatement of his driver's license.
4. In January 2005, Lindner spoke with respondent regarding the status of his case. Respondent informed Lindner that there was nothing he could do for him based on the fact that Lindner was not on probation with the Department of Motor Vehicles ("DMV"). Lindner then requested the return of the unearned advanced fees.
5. Upon request for the return of the unearned advanced fees, respondent represented to Lindner that he had contacted a friend at the Sunnyvale DMV who was a Traffic Commissioner and that Lindner should go there to talk to respondent's friend.
6. In truth and in fact, respondent had not contacted any Traffic Commissioner regarding the reinstatement of Lindner's driver's license prior to sending Lindner to the Sunnyvale DMV.
7. When Lindner arrived at the Sunnyvale DMV and spoke to the Traffic Commissioner as directed by respondent, the Traffic Commissioner informed Lindner that she did not know who respondent was nor was she aware of Lindner's case.
8. From February 2005 through August 2005, Lindner sent two letters and made several telephone calls to respondent requesting the return of the unearned fees.
9. Thereafter, respondent failed to respond to Lindner's two letters or his telephone calls requesting the return of the unearned advanced fees. Said fees were not refunded to Mr. Lindner until April 27, 2007.

Conclusions of Law

By failing to perform any services of value for Lindner, respondent recklessly, failed to perform legal services with competence, in violation Rules of Professional Conduct, rule 3-110(A).

By failing to refund to Lindner the unearned \$1,500 advanced fee until April 2007, respondent wilfully failed to refund unearned fees, in violation of Rules of Professional Conduct, rule 3-700(D)(2).



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By failing to inform Lindner that he had done nothing on his case, respondent failed to keep his client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in violation Business and Professions Code, section 6068(m).

Dismissals

The parties hereby stipulate that Counts Three and Five of Case No. 05-O-4152 be dismissed with prejudice.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was May 8, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 8, 2007, the estimated prosecution costs in this matter are approximately \$4,287.05. 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.

Generally, the Standards articulate a system of progressive discipline. The stipulated discipline here follows that theory of discipline: a one-year actual suspension is greater than respondent's last incident of discipline which included a six-month stayed suspension.

Although standard 1.7(b) of the Standards for Attorney Sanctions for Professional Misconduct provides that if respondent has a record of two prior impositions of discipline, the degree of discipline shall be disbarment "unless the most compelling mitigating circumstances clearly predominate," both standard 2.4 [wilfully failing to communicate with a client] and standard 2.10 [wilful violation of any Rule of Professional Conduct not otherwise specified in the standards, which includes rule 3-110(A)] provide for reproof or suspension.

In *Baker v. State Bar* (1989) 49 Cal.3d 804, 817, an attorney's total cessation of services to a client for an extended period of time, standing alone, and even though unintentional, was found to amount to an improper withdrawal from employment and he was actually suspended from the practice of law for one year and until he proved full restitution.

In *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, the attorney's total cessation of services to a client for a period of two years, standing alone, and even though unintentional, was clear and convincing evidence that the attorney effectively withdrew from employment without taking steps to protect the client's interests. Bach was actually suspended from the practice of law for nine months and until he paid the client restitution. Bach had one prior incident of discipline.

Here, although respondent has been twice previously disciplined, after accepting complaining witness John Lindner's representation, respondent was diagnosed with lung cancer, had a lung removed, and was hospitalized for several months. The complaining witness herein has now been made whole by refund of the unearned advanced fee, plus interest.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

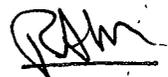
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hospitalized for several months. The complaining witness herein has now been made whole by refund of the unearned advanced fee, plus interest.

In *In re Silverton* (2005) 36 Cal.4th 81, 90, the Supreme Court criticized the State Bar Court's departure from the Standards in recommending a 60-day suspension rather than disbarment as not convincingly justified. In this case there is mitigation, so that a one-year actual suspension, coupled with the requirement that respondent comply with rule 9.20, California Rules of Court, appears adequate to protect the public.

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.



(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/18/2004.)

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In the Matter of Robert Allen Martin	Case number(s): 05-O-4152-PEM
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SIGNATURE OF THE PARTIES

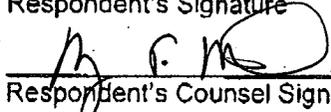
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

5-16-07
Date


Respondent's Signature

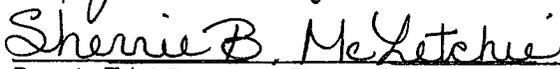
Robert Allen Martin
Print Name

5/17/07
Date


Respondent's Counsel Signature

Amy F. Morton
Print Name

5-21-07
Date


Deputy Trial Counsel's Signature

Sherrie B. McLetchie
Print Name

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In the Matter of ROBERT ALLEN MARTIN	Case number(s): 05-O-04152
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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.

1. On page 2, section (B)(1)(a)--the SO14281 belongs to case number 89-H-11089 instead of 86-O-18755.

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.)**

May 24, 2007
Date


PAT 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 May 24, 2007, I deposited a true copy of the following document(s):

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

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

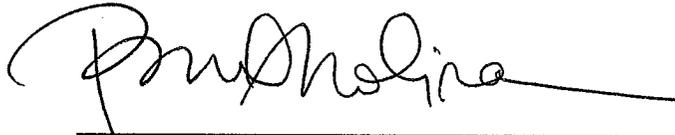
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**DANIEL JASON RUSSO
MORTON & RUSSO LLP
521 GEORGIA ST
VALLEJO, CA 94590**

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

SHERRIE MCLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 24, 2007**.



Bernadette C. O. Molina
Case Administrator
State Bar Court