

~~CONFIDENTIAL~~

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**State Bar Court of California  
Hearing Department  
San Francisco**

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

<p>Counsel For The State Bar</p> <p><b>Robin Brune</b> Deputy Trial Counsel 180 Howard Street, Seventh Floor San Francisco, California 94105 (415) 538-2218</p> <p>Bar # 149481</p>	<p>Case Number (s) 05-O-04243-PEM</p> <p><b>FILED</b> <i>lll</i></p> <p>JUN 29 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>	<p>(for Court use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>LODGED</b></p> <p>JUN 25 2007</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p><b>Michael E. Wine, Esq.</b> 301 N. Lake Avenue, Suite 800 Pasadena, California 91101 (626) 796-6688</p> <p>Bar # 58657</p>	<p>Submitted to: <b>Program Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: <b>Michael F. Borkowski</b></p> <p>Bar # 105068</p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 3, 1982**.
- (2) 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.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding 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".



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- (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 **89-O-14838**
  - (b)  Date prior discipline effective **April 27, 1992**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Rule 5-101(A)**;
  - (d)  Degree of prior discipline **private reproof**
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
    - On May 12, 1996, case no 94-O-19152, respondent was publicly reproofed for a violation of Rules of Professional Conduct, rule 3-700(a)(2)(failure to properly withdraw).**
    - On September 12, 1998, in case number 96-O-6385 (S070902) respondent was suspended for six months, stayed, and placed on probation for one year for violation of B&P Code, sections 6068(M) & 6068(i).**
    - On July 20, 2002, in case number 01-O-01629 (S105718) respondent was suspended for sixty days and placed on probation for one year for violation of Rules of Professional Conduct, rules 3-700(D)(1); 3-700(D)(2) and B&P Code, section 6068(m).**
- (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.

**Additional aggravating circumstances:**

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

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

**Participation in Lawyer's Assistance Program. On October 18, 2006, respondent voluntarily contacted the State Bar Lawyer Assistance Program to address his mental health/substance abuse**

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**condition. On October 19, 2006 respondent voluntarily signed a pre-enrollment evaluation plan with LAP. On \_\_\_\_\_ respondent entered into a long-term participation agreement with LAP.**

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

IN THE MATTER OF:       **MICHAEL F. BORKOWSKI**

CASE NUMBERS:           **05-O-04243-PEM**

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the State Bar Act and/or Rules of Professional Conduct.

**Case No. 05-O-04243-PEM**

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:

In or around late 2004, Ternjai Haynes ("Haynes") met with respondent on several occasions. Haynes discussed with respondent her desire to expunge a criminal conviction that she thought may hamper her ability to become a U.S. citizen. Respondent offered to assist Haynes in the expungement and took down Haynes' former married name, social security number and date of birth. On January 26, 2005, Haynes paid respondent \$500.00 to represent her in expunging her 1997 misdemeanor criminal conviction in *People v. Ternjai K. Baker*, Sacramento County Superior Court case no. 97F10438. Thereafter, respondent did not meet or communicate with Haynes about her case.

On or about March 15, 2005, having not heard from respondent, Haynes' husband, James Haynes, left a message for respondent requesting a return call. On or about March 15, 2005, respondent returned Mr. Haynes telephone call. Mr. Haynes identified himself and asked about the status of his wife's case. Respondent informed Mr. Haynes that he was in the midst of something and would call him back. Respondent did not call Mr. Haynes back as he stated that he would, nor did he contact Mrs. Haynes. Mr. Haynes left at least three additional messages for respondent, but respondent did not return the calls.

Following a telephone call from the State Bar Client Security Fund, on or about September 27, 2005, respondent sent a letter to Haynes stating the following:

Enclosed is a check for \$500.00 refunding your retainer in full. I'm sorry that my trial schedule has delayed me in completing the motion to expunge your record.

Good luck in getting your record expunged.

Respondent obtained a copy of Haynes criminal record in or about February, 2005. He xeroxed off a pre-printed form from a criminal handbook in or about March, 2005, and added some handwritten notations. Thereafter, he took no further action on Ms. Haynes legal matter. The actions respondent took provided no benefit to Haynes.

### Conclusions of Law

1. By failing to complete his legal services for Haynes' expungement, and by taking no action for five months, from April, 2005 to September 26, 2005 on Haynes legal matter, respondent recklessly or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

2. By not calling Mr. Haynes back as he indicated he would do, by not returning Mr. Haynes' telephone messages, and by failing to inform Haynes of the status of her expungement, respondent failed to respond to client inquiries and failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(6), is December 21, 2006.

### **AGGRAVATING CIRCUMSTANCES.**

#### **Facts Supporting Aggravating Circumstances:**

#### Prior Record of Discipline:

Respondent has four prior incidents of discipline, as follows:

On July 20, 2002, in case number 01-O-01629 (S105718), respondent was suspended for sixty days and placed on probation for one year for failing to communicate, failing to return the client file and failing to return unearned fees.

On September 12, 1998, in case number 96-O-6385 (S070902), respondent was suspended for six months, stayed, and placed on probation for one year for failing to communicate and failing to cooperate in a State Bar investigation.

On May 12, 1996, in case number 94-O-19152, respondent was publicly reprovved for failing to properly withdraw from employment (abandoning his client criminal appeal).

On April 27, 1992, in case number 89-O-14838, respondent was privately reprovved for failing to obtain a conflict waiver.

**MITIGATING CIRCUMSTANCES.**

No Harm:

Respondent's violation of Rule 3-110(A) did not harm Ms. Haynes. Ms. Haynes' husband informed the Bar that expungement was not necessary for her citizenship proceedings after all.

Candor and Cooperation:

Respondent has been candid and cooperative with the State Bar to stipulate to the misconduct in this matter.

Remorse:

On September 16, 2005, Ed Henson, of the State Bar Client Security Fund, contacted respondent regarding Haynes. On September 27, 2005, respondent sent a letter to Haynes which included a refund of her retainer and an apology.

**ADDITIONAL MITIGATING CIRCUMSTANCES.**

**Additional Mitigating Circumstances:**

Participation in Lawyer's Assistance Program:


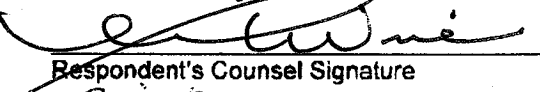

On October 18, 2006, respondent voluntarily contacted the State Bar Lawyer Assistance Program to address his mental health condition. On October 19, 2006, respondent voluntarily signed a pre-enrollment evaluation plan with LAP. On \_\_\_\_\_, respondent entered into a long-term participation agreement with LAP.

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In the Matter of Michael F. Borkowski	Case number(s): 05-O-04243-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.

<u>1/2/07</u> Date	 Respondent's Signature	<u>Michael F. Borkowski</u> Print Name
<u>1/2/07</u> Date	 Respondent's Counsel Signature	<u>Michael E. Wine</u> Print Name
<u>1/4/07</u> Date	 Deputy Trial Counsel's Signature	<u>Robin Brune</u> Print Name



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In the Matter Of <b>Michael F. Borkowski</b>	Case Number(s): <b>05-O-04243-PEM</b>
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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 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.)

Date

June 25, 2007

Judge of the State Bar Court

Pat McElroy