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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar PAUL T. O'BRIEN SUPERVISING TRIAL COUNSEL THE STATE BAR OF CALIFORNIA 1149 S. HILL ST. LOS ANGELES, CA 90015-2299 Bar # 171252	Case number(s) 05-0-04730 <div style="text-align: center;"> kwiktag® 022 603 809  </div>	(for Court's use) <div style="text-align: center;"> FILED <i>MDS</i> AUG 31 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent JEFFREY P. LUSTMAN P.O. BOX 38653 LOS ANGELES, CA 90038 Bar # 181141	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of JEFFREY P. LUSTMAN Bar # 181141 A Member of the State Bar of California (Respondent)	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <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 13, 1995

(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 11 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

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

- (a) ☒ costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b) ☐ case ineligible for costs (private reproof)
- (c) ☐ costs to be paid in equal amounts for the following membership years:

(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e) ☐ costs entirely waived

(9) The parties understand that:

- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) ☐ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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 _____

(Do not write above this line.)

- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.

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- (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:

(Do not write above this line.)

D. Discipline:

- (1) ☐ Private reproof (check applicable conditions, if any, below)
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ Public reproof (check applicable conditions, if any, below)

E. Conditions Attached to Reproof:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of two (2) years
- (2) ☒ During the condition period attached to the reproof, 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 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 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (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 conditions attached to the reproof.
- (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 of the Ethics School and passage of the test given at the end of that session.
- ☐ No Ethics School ordered. 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 required to be filed with the Office of Probation.
- (10) ☒ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproof.
- ☐ No MPRE ordered. Reason: _____
- (11) ☐ 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:

Respondent will attend six (6) additional units of Minimum Continuing Legal Education ("MCLE") in Ethics during the first year of the Reproof period and report his completion on the first quarterly report following completion.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JEFFREY P. LUSTMAN

CASE NUMBER(S): 05-O-04730

FACTS AND CONCLUSIONS OF LAW.

1. On September 30, 2005, Respondent sent a letter to Justice Candace Cooper, Justice Laurence Rubin, and Justice Madeleine Flier, of the California Court of Appeal, Second Appellate District. Respondent wrote to the justices regarding a matter he had previously appealed, and which had been heard by the three justices seated as the assigned appellate panel, *Shirley Skobin v. County of Los Angeles*, et al, B170099 (Los Angeles County Superior Court case no. LC061274),.

2. Subsequent to the issuance of the Court of Appeal's unpublished opinion, which granted, in part, and denied, in part, Respondent's appeal on behalf of his client, the California Supreme Court denied the petition for review Respondent filed on Skobin's behalf. By the time he wrote the letter, the Skobin case had been remanded to the trial court for further proceedings.

3. In his September 30, 2005, letter, Respondent renewed arguments that he had urged upon the Court of Appeal, originally, and further asserted that the Court of Appeal should have reversed a ruling by the trial court to dismiss a defendant nursing facility from the case. Because he did not agree with the panel's decision, Respondent accused the three justices of engaging in a "blatant misrepresentation in an attempt to protect the county." Reiterating his accusation,

Respondent wrote: "The average victim of the system does not make decisions that can much affect you, and you decided to protect the County, which presumably made you feel safer than protecting its victims."

4. In the letter's penultimate paragraph, Respondent wrote: "I will give you three weeks to come up with justification for what you did. If you do not contact me with such justification, I will report you to the Commission [on Judicial Performance], with probable follow-up publicity. If you believe that you can stop me by pulling rank, or if the State Bar pulls some threat on me to try to stop me, none of that will work. Someone has got to take a stand on judicial misbehavior, and I guess I'm elected."

CONCLUSIONS OF LAW

By accusing the three justices of "blatant misrepresentations," by threatening to report the three justices to the Commission on Judicial Performance unless they provided "justification" to Respondent for their decision within three weeks, and by unilaterally placing himself as the final arbiter, i.e., superior to the courts, Respondent wilfully failed to maintain the respect due to the courts of justice and judicial officers, in violation of Business and Professions Code section 6068(b).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 26, 2006.

AUTHORITIES SUPPORTING DISCIPLINE.

- *Standard 2.6* calls for disbarment or suspension where culpability found for violations of B&P §6068, with due regard for the purposes of imposing discipline, as set forth in *Standard 1.3*.
- *Standard 1.3* recognizes that rehabilitation of the member is a permissible object of the sanction imposed, provided it is consistent with the primary purposes of sanctions, protection of the public, courts and legal profession, and maintenance of high professional standards by attorneys and the preservation of public confidence in the profession.
- Rule 5-100(A) prohibits a member from threatening to present criminal, administrative, or disciplinary charges to gain advantage in a civil dispute.
- In *Ramirez v. State Bar* (1980) 28 Cal.3d 402, in pleadings filed with the court, the respondent "falsely maligned" justices of the California Court of Appeal, Third District, alleging that the justices on that panel had acted "unlawfully" and "illegally" in hearing a case the respondent had litigated. The respondent in *Ramirez* implied that the justices had acted as they had for monetary gain, and had named the justices as defendants in an appeal of their decision. He made those assertions with a reckless disregard for the truth. Ramirez, who wrote a letter of apology to the justices he had previously accused of improprieties, received a 30 day actual suspension.
- In *the Matter of Westphal*, 808 S.W.2d 82 (Mo. banc 1991): Without any corroborative evidence, Respondent accused a judge of deliberate dishonesty and of purposefully ignoring the law to achieve personal ends. Respondent in that case, moreover, made the comments at a press conference. Respondent received a public reprimand.

OTHER CIRCUMSTANCES AFFECTING DISCIPLINE

Respondent now recognizes his misconduct, and offered to write a letter of apology to the justices to whom he wrote the offending letter on September 30, 2005. The parties recognize and agree that because the Skobin matter has again come before the Court of Appeal, Second District, it may not be appropriate (or prudent) for Respondent to do so at this time, and there is no requirement (nor prohibition) that write the proposed letter of apology. Respondent's remorse, i.e., his recognition of wrongdoing, however, has not been "prompt." Moreover, "considerable time" has not elapsed since his misconduct, thus there is no evidence of meaningful rehabilitation. These factors, then, are not truly "mitigating," but have been considered in entering into this stipulation, particularly in light of *Standard 1.3*, above.

(Do not write above this line.)

In the Matter of JEFFREY P. LUSTMAN	Case number(s): 05-0-04730
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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 Facts, Conclusions of Law and Disposition.

*I refer the State Bar Court to my letter of July 19, 2006 as explanation, particularly my contacts with the Ethics Hotline prior to my sending out my September 30, 2005 letter. *JP*

8.2.06
Date

Jeffrey P. Lustman
Respondent's signature

JEFFREY P. LUSTMAN
Print name

Date

Respondent's Counsel's signature

Print name

8/3/06
Date

Paul T. O'Brien
Deputy Trial Counsel's signature

PAUL T. O'BRIEN
Print name

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In the Matter of JEFFREY P. LUSTMAN	Case number(s): 05-0-04730
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☐ All court dates in the Hearing Department are vacated.

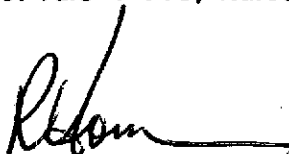
The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

8/29/06

Judge of the State Bar Court



CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 31, 2006, I deposited a true copy of the following document(s):

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

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

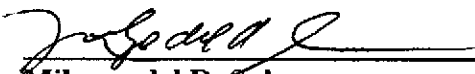
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JEFFREY P. LUSTMAN
P O BOX 38653
LOS ANGELES, CA 90038**

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

Paul O'Brien, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 31, 2006.**



Milagro del B. Salmeron
Case Administrator
State Bar Court