# State Bar Court of California Hearing Department Los Angeles PUBLIC MATTER Counsel For The State Bar Case Number (s) (for Court's use) 05-O-05175 **AGUSTIN HERNANDEZ** OFFICE OF THE CHIEF TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015-2299 DEC 07 2007 N STATE BAR COUR CLERK'S OFFICE Bar # 161625 LOS ANGRIES Counsel For Respondent DAVID A. CLARE 444 West Ocean Blvd., Ste. 800 Long Beach, CA 90802 Submitted to: Assigned Judge Bar # 44971 In the Matter Of: STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DEBRA L. KOVEN DISPOSITION AND ORDER APPROVING Bar # 149983 STAYED SUSPENSION; NO ACTUAL SUSPENSION A Member of the State Bar of California ☐ 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:

(Respondent)

- (1) Respondent is a member of the State Bar of California, admitted **December 4. 1990**.
- (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 **11** 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.

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8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):				
<ul> <li>costs added to membership fee for calendar year following effective date of discipline.</li> <li>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)</li> <li>costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"</li> <li>costs entirely waived</li> </ul>				
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 or a separate attachment entitled "Prior Discipline.				
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.				
<b>Trust Violation:</b> 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.				
Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.				
<b>Indifference</b> : Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.				
<b>Lack of Cooperation:</b> Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.				
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				
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C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.							
(1)	$\boxtimes$	No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious. Respondent has no record of prior discipline in 17 years of practice.					
(2)		No Harm: Respondent did not harm the client or person who was the object of the misconduct.					
(3)		<b>Candor/Cooperation:</b> 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. On September 26, 2005, before the State Bar was involved, Respondent filed a pleading with the Court of Appeal in which she apologized to the Court of Appeal and acknowledged that her statements were "improper" and "inexcusable."					
(5)		<b>Restitution:</b> Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.					
(6)		<b>Delay:</b> 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)		<b>Emotional/Physical Difficulties:</b> 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)		<b>Severe Financial Stress:</b> 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)		<b>Rehabilitation:</b> Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.					
(13)	(13) No mitigating circumstances are involved.						
Additional mitigating circumstances							
D. Discipline:							
(1)	$\boxtimes$	Stayed Suspension:					

(Do n	ot writ	e above	e this lin	ie.)		
	(a) Respondent must be suspended from the practice of law for a period of <b>one year</b> .					
		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:		
	The	abov	e-refe	renced suspension is stayed.		
(2)	Probation:					
	Respondent is placed on probation for a period of <b>one year</b> , which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)					
E. A	ddit	tiona	I Cor	nditions of Probation:		
(1)	$\boxtimes$	During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.				
(2)		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.				
(3)		Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probatic 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.				
(4)	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.					
				to all quarterly reports, a final report, containing the same information, is due no earlier than days before the last day of the period of probation and no later than the last day of probation.		
(5)				t must be assigned a probation monitor. Respondent must promptly review the terms and of probation with the probation monitor to establish a manner and schedule of compliance.		

(6)

cooperate fully with the probation monitor.

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

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

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	directed to Respondent personally or in writing relating to whether Respondent is comply complied with the probation conditions.							
(7) Within one (1) year of the effective date of the discipline herein, Respondent must provid Probation satisfactory proof of attendance at a session of the State Bar Ethics School, are test given at the end of that session.								
			No Ethics School recommended. Reas	son:				
(8)		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.						
(9)	- <u> </u>	The following conditions are attached hereto and incorporated:						
			Substance Abuse Conditions		Law Office Management Conditions			
			Medical Conditions		Financial Conditions			
F. C	ther	Con	ditions Negotiated by the Parti	es:				
(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 within one year. 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) Other Conditions:			er Conditions:					
			e.					

Attachment language (if any):

#### FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes.

#### FACTS:

- 1. On May 20, 2002, Respondent filed an appeal on behalf of her client Paul Bashkin in the Court of Appeal of the State of California, Second Appellate District, Division Six ("Court of Appeal"), in a matter designated *Bashkin v. Blase, et al.*, Court of Appeal Case No. B159344. This appeal was from an order of the Superior Court of the State of California, County of Ventura ("Superior Court"), denying a motion by Bashkin to disqualify the defendants' counsel and an expert witness retained by the defendants.
- 2. On June 17, 2003, Respondent filed another appeal on behalf of Bashkin in the Court of Appeal in *Bashkin v. Blase, et al.* This appeal was assigned Court of Appeal Case No. B168013, and was from an order of the Superior Court entering summary judgment in favor of the defendants.
- 3. On June 18, 2003, Respondent submitted to the Court of Appeal a letter in Case No. B159344, requesting that the justices of the Court of Appeal recuse themselves on the ground of bias against Bashkin.
- 4. On July 2, 2003, the Court of Appeal denied the request for recusal in Case Nos. B159344 "as frivolous."
- 5. In separate opinions issued on May 31, 2005, following briefing and oral argument, the Court of Appeal affirmed the Superior Court's order denying Bashkin's motion to disqualify the defendants' counsel and expert witness in Case No. B159344, and affirmed the summary judgment in Case No. B168013.
- 6. On June 16, 2005, Respondent petitioned for rehearing in both appeals.
- 7. In the petition for rehearing in Case No. B159344, Respondent made the following statements, with the emphasis and Capitalization as shown:
- 7.1. "After reading the Opinion, it became painfully obvious that this Court worked backwards in reviewing the issues to ensure that the 'ends justified the means.' . . . [¶] It is clear from the Opinion that this Court neither reviewed the controlling cases, nor read [Bashkin's] Reply Brief, which contained the authority mandating reversal. And why would this Court look at cases cited by [Bashkin], anyhow, when it has concealed its own conflicts with [defendants] resulting from their prior relationships! How could [Bashkin] possibly convince this Court to follow the governing law requiring expert's and counsel's disqualification, when this Court engaged in the same type of 'loyalty-breaching' activities that [Bashkin] was complaining about in his motion to disqualify them?! [Bashkin] never stood a chance to succeed on this appeal. If this Court dared to disqualify an expert and a defense firm that

failed to disclose conflicts, its own conduct could be called into question! The cards were not only stacked against [Bashkin], but the Jokers were wild!"

- 7.2. "THIS COURT CONSPIRED WITH [DEFENDANTS] TO DEFEAT [BASHKIN'S] INTERESTS."
- 7.3. "In fact, the justices of this Court refused to disclose their conflicts of interest; refused to respond to [Bashkin's] charges; and refused to recuse themselves, precisely because 'the fix was in' . . . ."
- 7.4. "Despite its obvious 'window-dressing,' this Court's elaborate 'staging' of the removal of Justice Coffee from the panel hearing oral argument on [Bashkin's] two appeals, ironically proved three things: First, that Justice Gilbert knew full well that [Bashkin's] charges against the other three justices were anything but 'frivolous.' Second, that all of the prior rulings against [Bashkin] in which at least Justice Coffee participated were tainted. And, third, that there were still at least two justices comprising the panel (Yegan and Perren), with personal biases in favor of [defendants], who had failed to respond to [Bashkin's] recusal demands, that were going to perpetuate the 'fix.' [¶] An independent review of the totality of the circumstances would disclose a 'personal bias or prejudice' by the conflicted justices in favor of [defendants] and against [Bashkin] . . . . This Court's rulings against [Bashkin] in this appeal, each of which had no basis whatsoever in fact or law, were merely a reaffirmation that the 'fix' was proceeding full bore."
- 7.5. "A reasonable person, aware of the facts, would believe that this Court purposely denied [Bashkin's] stay request and purposely delayed the hearing on this interim appeal . . . , since it had already <u>predetermined</u> that it could 'kill-two-birds-with-one-stone' by first affirming the summary judgment, and then claiming that its affirmance somehow 'mooted' the [expert witness] disqualification. The fix was not only 'in,' but proceeding at full throttle."
  - 7.6. "This Court's predilection for prejudicial posturing . . . ."
  - 7.7. "THIS COURT MANIPULATED AN AFFIRMANCE . . . . "
- 7.8. "If this Court had conducted an honest and impartial review of [Bashkin's] willful suppression claim, it would have to have found, as a matter of law, a willful suppression of evidence by [defendants' counsel] . . . ."
- 7.9. "The bottom line: the record establishes the 'presence of judicial partiality' in . . . this Court's review of [Bashkin's] motion."
- 7.10. "In fact, this Court's finding is a complete red herring. This Court purposely concocted a flimsy excuse <u>not</u> to rule on the merits of this issue, because it knew that to do so would have required it to reverse . . . ."

- 8. In the petition for rehearing in Case No. B168013, Respondent made the following statements, with the emphasis and Capitalization as shown:
- 8.1 "[I]t is difficult to remain focused on what is 'just' when faced with an unfair and biased Court that predetermined its findings and worked backwards to get there, by deciding the instant appeal before the interim disqualification appeal. In light of their own inherent conflicts of interest pertaining to prior relationships with [defendants] not to mention, the home-town factor of the 'Ventura Good-Old Boy' [defendants] in combination with the personal animus this Court has toward [Bashkin], even with Clarence Darrow as his representative, [Bashkin] did not stand a chance of prevailing in this Court. The fix was most assuredly 'in.'"
- 8.2. "In order to manipulate an affirmance, this Court ignored issues that mandated reversal; refused to apply the law that supported [Bashkin's] position; failed to view the facts and inferences in the light most favorable to [Bashkin], all to his detriment and prejudice; and employed an 'end-justify-the-means' approach in order to push this litigant out of the court system."
- 8.3. "[The court] refused to afford [Bashkin] an opportunity to address these additional grounds upon which his appeal was rejected, because its intent was to deny [Bashkin] his constitutional right to equal protection under the law."
- 8.4. "This Court's finding was not simply a flagrant, reprehensible breach of its ethical and legal obligations to afford every litigant, including [Bashkin], equal protection under the law, but it is contrary to all published legal authority in this state. Moreover, it demonstrates a profound lack of integrity, by directly assaulting [Bashkin's] right to have each of his appeals reviewed by a non-prejudicial court that had not enjoyed prior relationships with [defendants] which it kept concealed for the entirety of [Bashkin's] lawsuits involving them!"
- 8.5. "When this Court chose to engage in a <u>betrayal of the fundamental values and principles of the law</u>, in order to defeat the interests of a 'Bashkin,' it undertook an 'ends-justifies-the-means' approach. The 'ends' was to eliminate [Bashkin] from the judicial system, whatever the cost being this Court's integrity and continuing viability as a depository of the public trust."
- 8.6. "Far from viewing the evidence in the light most favorable to [Bashkin], this Court spent two pages of its Opinion trashing [Bashkin] as the 'patient-from-hell' who allegedly ordered his doctor to alter his medical records. . . . How convenient for this Court to concoct a trumped-up review of this issue that fits so snugly into its own predetermined perception of this litigant!"
- 8.7. "THIS COURT MISREPRESENTED THE EVIDENCE IN ORDER TO MANIPULATE AN AFFIRMANCE ON [A] FRAUD THEORY OF LIABILITY."

- 8.8. "[I]f this panel remains steadfast to its unique interpretation of the proper review of unchallenged theories, it must publish its Opinion, so that [Bashkin] will not be singled out for special treatment (which, of course, was this Court's intention from the outset)."
- 8.9. "The bottom line is: this Court refused to apply the governing principles and law to it [sic] analysis of the facts in order to manipulate an affirmance on this issue in favor of a litigant with whom the Court had a personal relationship and against a litigant it views with disdain. . . . Therefore, it must now rehear and reverse the summary judgment on these fraud theories of liability, or be guilty of itself having committed fraud in betraying its duty to uphold the public trust in a fair, impartial judiciary."
- 9. At the time Respondent made the statements set forth in paragraphs 7.1 to 7.10 and 8.1 to 8.9, Respondent knew that the statements were false, or made them with a reckless disregard as to their truth or falsity, thereby impugning the integrity of the court.
- 10. On June 28, 2005, in a matter designated *In re Debra L. Koven on Contempt*, Court of Appeal Case No. B184017, the Court of Appeal issued an order to show cause why Respondent should not be held in contempt and punished for impugning the integrity of the Court based on the petition for rehearing in Case No. B159344, including, but not limited to, each of the statements set forth in paragraphs 7.1 to 7.10, above.
- 11. Also on June 28, 2005, in a matter also designated *In re Debra L. Koven on Contempt*, Court of Appeal Case No. B184018, the Court of Appeal issued an order to show cause why Respondent should not be held in contempt and punished for impugning the integrity of the court based on the petition for rehearing in Case No. B168013, including, but not limited to, each of the statements set forth in paragraphs 8.1 to 8.9, above.
- 12. On September 26, 2005, Respondent, through counsel, filed a consolidated return to the orders to show cause in Case Nos. B184017 and B184018, including a declaration in which Respondent apologized to the Court of Appeal and acknowledged that the statements set forth in paragraphs 7.1 to 7.10 and 8.1 to 8.9, above, were "improper" and "inexcusable."
- 13. On October 14, 2005, the Court of Appeal held a hearing on the orders to show cause, which Respondent attended, represented by counsel.
- 14. On November 22, 2005, the Court of Appeal issued a decision in Case Nos. B184017 and B184018, in which it found the statements set forth in paragraphs 7.1 to 7.10 and 8.1 to 8.9, above, to be contemptuous on their face, and found Respondent guilty of two counts of direct criminal contempt, one count for each petition for rehearing in Case Nos. B159344 and B184018, respectively, and ordered Respondent to pay fines of \$1,000 for each count of contempt, for a total of \$2,000, due within 60 days of the date of finality of the decision.
  - 15. The decision became final on December 22, 2005.

#### CONCLUSIONS OF LAW:

16. By making the statements set forth in paragraphs 7.1 to 7.10 and 8.1 to 8.9 above, in pleadings filed in the Court of Appeal, Respondent failed to maintain the respect due to the courts of justice and judicial officers.

#### SUPPORTING AUTHORITY:

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

Recently, the Supreme Court emphasized the importance of the standards and held that great weight should be given to the application of the standards in determining the appropriate level of discipline. The Court indicated that unless it has "grave doubts as to the propriety of the recommended discipline," it will uphold the application of the standards. *In re Silverton* (2005) 36 Cal. 4th 81, 91-92.

Standard 2.6(a) provides that Respondent's violation of Business and Professions Code, section 6068(b) shall result in suspension or disbarment "depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

Respondent has offered no compelling reason that would justify a deviation from the standards.

#### PENDING PROCEEDINGS:

The disclosure date referred to on page one, paragraph A(7) was October 25, 2007.

(Do not write above this line.)		
In the Matter of	Case number(s):	
DEBRA L. KOVEN	05-O-05175	

## 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.

The second of th	· who are a source and a source	
14/15/07		DEBRA L. KOVEN
Date	Bespondent's Signature	Print Name
10/2/07	Drya Co	DAVID A. CLARE
Date	Respondent's Counsel Signature	Print Name
November 8,2007 Date	OHAL	AGUSTIN HERNANDEZ
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)				
In the Matter Of DEBRA L. KOVEN	Case Number(s): 05-O-05175			
ORD	DER			
Finding the stipulation to be fair to the parties and IT IS ORDERED that the requested dismissal of 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.				
The parties are bound by the stipulation as approphe stipulation, filed within 15 days after service of property further modifies the approved stipulation. (See effective date of this disposition is the effective formally 30 days after file date. (See rule 9.18)	f this order, is granted; or 2) this court modifies rule 135(b), Rules of Procedure.) <b>The</b> re date of the Supreme Court order herein,			
Date J	ludge of the State Bar Court  RICHARD A. HONN			

## 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 December 7, 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:

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

DAVID ALAN CLARE ESQ DAVID A CLARE, ATTORNEY AT LAW 444 W OCEAN BLVD STE 800 LONG BEACH, CA 90802

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

# Agustin Hernandez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 7, 2007**.

Certificate of Service.wpt