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

Counsel For The State Bar  <b>Susan I. Kagan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2037</b>  Bar # 214209	Case Number (s) <b>06-O-10954</b>	(for Court's use)  <b>PUBLIC MATTER</b>  <b>FILED</b>   JAN 13 2009  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent  <b>Carol Langford, Esq. 100 Pringle Ave., Ste. 570 Walnut Creek, CA 94596 (925) 938-3870</b>  Bar # 124812	Submitted to: <b>Settlement Judge</b>	
In the Matter Of: <b>Gordon Spencer</b>  Bar # 67634  A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <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 15, 1975**.
- (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."



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- (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: (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
  - (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.
- (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. **See p. 8.**
- (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. **See p. 8.**
- (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. **See p. 8.**
- (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**

**No Prior Discipline:** Respondent has no prior record of discipline over many years of practice. **See page 8.**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **two (2) years**.

- 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 **thirty (30) days**.

- 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 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: **In July 2006, respondent participated in eight (8) hours of ethics classes.**
- (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.**
- No MPRE recommended. Reason:
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20,

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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:**

Attachment language begins here (if any):

## **FACTS AND CONCLUSIONS OF LAW**

### **Facts**

1. At all relevant times, respondent was the District Attorney of Merced County.
2. At all relevant times, Karen Spencer was married to respondent's son, Nathan Spencer.
3. On March 18, 2005 Karen and Nathan Spencer ("Spencers") met with a representative of Armstrong Cabinet Products ("Armstrong Cabinets" or "the company") concerning the purchase of additional kitchen cabinets. The representative drew a sketch of the cabinets the Spencers wanted installed and the sketch included two small end cabinets the representative labeled as B5-24. The end cabinets were also set forth in a list of the parts to be included in the order under the heading, "Lot #118" says "2-B5-24 1L/1R." The company's representative told the Spencers that the price on the contract they would be receiving from the company would include everything on the sketch.
4. Subsequently the Spencers received a contract from Armstrong Cabinets and Karen Spencer executed a contract with the company for the purchase and installation of kitchen cabinets. The contract set forth the price of the shelving as \$3106.54 and also stated: "Pricing reflects manufacture, delivery, and install of additional cabinets per the meeting between Armstrong Field Technician and said customer on March 18, 2005... See attached sketch developed at time of initial meeting on March 18, 2005." The Spencers paid half of the contract price to schedule installation as called for in the contract. Thereafter, the company's installer installed the cabinets, but he did not install the end shelves set forth in the sketch. When Nathan Spencer questioned the installer about the end shelves, the installer informed him that the company forgot them when they loaded the truck. The installer informed Nathan that the shelves were part of the sketch and the contract and someone would come out later and install the end shelves. Based on the representation of the installer, Nathan Spencer paid the remaining half of the contract price, as provided in the contract. As of that payment, the contract price was paid in full.
5. Thereafter a dispute arose between the Spencers and Armstrong Cabinets. Armstrong Cabinets admitted that the shelves were included in the sketch and contract, but claimed that the shelves were not included in an invoice. Therefore, the company claimed that the Spencers did not pay for the shelves. On the other hand, Karen Spencer claimed that the shelves were already paid for since they were included in the contract and the sketch. Therefore, she requested installation of the shelves for no additional charge. On June 7, 2005, the company sent a letter to Karen Spencer admitting its error and proposing that the Spencers pay an additional \$266.00 for the shelves. On June 7, 2005 the Spencers rejected the company's proposal on the basis that they claimed the end shelves were included in the contract and had been paid in their final payment to the company based on the representations of the installer.
6. Thereafter the Spencers contacted respondent and asked if his office could look into the matter ("the cabinet matter"). Respondent agreed and asked for the relevant paperwork. Karen Spencer provided respondent the paperwork including the June 7, 2005 letter from Armstrong Cabinets.
7. Upon receipt and review of the paperwork, respondent assigned the cabinet matter to a deputy district attorney who handled consumer fraud in the Merced County District Attorney's Office. Subsequently the deputy district attorney was dismissed from the office for matters entirely unrelated to the cabinet matter. The deputy district attorney had taken no action on the cabinet matter.
8. In September 2005, during a family event at Nathan Spencer's house, respondent discovered that no action had been taken by the consumer deputy district attorney on the cabinet matter. Thereafter respondent decided to assign the cabinet matter to Albert Flores ("Flores") an investigator in the Merced District Attorney's Office. A few days prior to September 7, 2005, respondent contacted Flores to notify him about the assignment and schedule a meeting to discuss the matter.
9. On September 7, 2005, respondent met with Flores in respondent's office. At that time, respondent explained the

cabinet matter to Flores and provided him with copies of the relevant paperwork. Respondent's conversation with Flores was interrupted by other business. Consequently, respondent did not feel he was communicating all of the relevant matters to Flores. Therefore, respondent asked Flores for permission to use Flores' name in a telephone call to Armstrong Cabinets. Flores agreed and provided respondent with Flores' direct line telephone number. Flores remained in the room for the entire telephone conversation. Respondent then called the Armstrong Cabinets and informed the company that the call was an inquiry about a contract for cabinets and end shelves that were not installed. During the call, respondent misrepresented himself as Albert Flores of the Merced County District Attorney's Office. The Armstrong Cabinets' representative indicated a familiarity with the case, but said that she would have to contact the company's legal department and call Mr. Flores back. The representative asked for Flores' contact information and respondent provided Flores' telephone number. The call lasted approximately two minutes and was the only call respondent made on the cabinet matter.

10. Upon learning of the company's promise to call Flores, Flores asked how he would explain the difference between his voice and respondent's voice. In response, respondent advised Flores to tell the company that he was sick. On September 8, 2005, Armstrong Cabinets left a voicemail message with Flores requesting that he contact the company. On September 9, 2005, Flores contacted Armstrong Cabinets and was advised that the company would honor their contract and sketch and provide the missing shelves. Thereafter, Flores notified respondent of the company's response.

11. Respondent readily acknowledges that using Flores' name was a mistake and has never denied using Flores' name. Respondent contends that he used Flores' name in an effort to avoid intimidating Armstrong Cabinets had the company known that the dispute was with the children of the District Attorney.

#### **Conclusions of Law**

By falsely representing himself as Albert Flores of the District Attorney's Office in the telephone conversation with Armstrong Cabinets on September 7, 2005, for the purpose of making an inquiry about the missing shelving on behalf of an immediate family member, respondent committed an act involving moral turpitude in violation section 6106 of the Business and Professions Code.

#### **PENDING PROCEEDINGS**

The disclosure date referred to on page two, paragraph A (7) was December 16, 2008. There are no other investigations or disciplinary actions pending against respondent at this time.

#### **FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES**

##### **AGGRAVATING CIRCUMSTANCES**

There are no aggravating circumstances in this matter.

##### **MITIGATING CIRCUMSTANCES**

Standard 1.2(e)(i). Respondent has been in practice since December 15, 1975. He has no prior record of discipline.

Standard 1.2(e)(v). Respondent displayed spontaneous candor and cooperation to the State Bar during the investigation.

Standard 1.2(e)(vi). Respondent demonstrated good character.

Standard 1.2(e)(vii). Respondent displayed remorse for his misconduct.



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## **SUPPORTING AUTHORITY**

Standard 2.3 requires an actual suspension or disbarment for a respondent that has committed an act of moral turpitude.


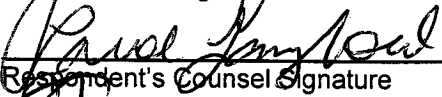

The proper discipline for an act of moral turpitude is a period of actual suspension. (See *In the Matter of Dale* (2005) 4 Cal. State Bar Ct. Rptr. 798 [four months' actual suspension for making misleading statements to induce a witness to sign a confession; no prior record of discipline].) Based on respondent's extensive mitigation, including 30 years of discipline-free practice, a 30-day actual suspension is appropriate in this matter.

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In the Matter of Gordon Spencer	Case number(s): 06-O-10954
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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>12-29-05</u> Date	 Respondent's Signature	<u>Gordon Spencer</u> Print Name
<u>12-23-08</u> Date	 Respondent's Counsel Signature	<u>Carol Langford, Esq.</u> Print Name
<u>1/5/09</u> Date	 Deputy Trial Counsel's Signature	<u>Susan I. Kagan</u> Print Name

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In the Matter Of <b>Gordon Spencer</b>	Case Number(s): <b>06-O-10954</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 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 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 9.18(a), California Rules of Court.)**

Jan 9, 2009  
Date

*Lucy Armenta*  
Judge of the State Bar Court  
*Lucy Armenta*

**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 January 13, 2009, 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:

**CAROL LANGFORD  
100 PRINGLE AVE #570  
WALNUT CREEK, CA 94596**

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**SUSAN I. KAGAN**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 13, 2009.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court