

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

kwiktag®

018 040 028

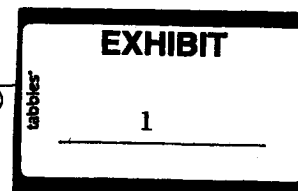


<b>Counsel For The State Bar</b>  Mark Hartman Office of the Chief Trial Counsel 180 Howard St. San Francisco, CA 94105 Telephone: (415) 538-2558  Bar # 114925	<b>Case Number (s)</b> 06-O-11061 07-O-11274	<b>(for Court's use)</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> <i>Ru</i>  OCT 21 2010  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<b>Counsel For Respondent</b>  William M. Balin 345 Franklin St. San Francisco, CA 94102 Telephone: (415) 241-7360  Bar # 59104	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>REPROVAL</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter Of:</b>  ASHWANI K. BHAKRI  Bar # 163521  A Member of the State Bar of California (Respondent)		

**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 January 15, 1993.
- (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 12 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - ☐ case ineligible for costs (private reproof)
  - ☐ 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)
  - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - ☐ 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 03-O-04586 and 04-O-13954.
  - (b) ☒ Date prior discipline effective 12/7/06.
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Three violations of rule 3-110(A) of the Rules of Professional Conduct.
  - (d) ☒ Degree of prior discipline - Private Reproof.
  - (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. (See page 9.)
- (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 page 9.)
- (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. (See page 10.)
- (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 page 10.)
- (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:**

Respondent has provided substantial, ongoing service to the South Asian and Asian-Pacific communities.

**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 Reproval:**

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of one year.
- (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 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 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 30 (thirty) 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 the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the 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 conditions attached to the reprobation.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ 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 reprobation.
- ☒ No MPRE recommended. Reason: Not required.
- (11) ☒ The following conditions are attached hereto and incorporated:
- |   |  |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions                        |

**F. Other Conditions Negotiated by the Parties:**

In the Matter of  
**ASHWANI BHAKRI,**  
No. 163521

Case number(s):  
06-O-11061; 07-O-11274

A Member of the State Bar

### **Law Office Management Conditions**

- a. ☒ Within            days/one month./            years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within            days/            months/one year of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than three hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☒ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for one year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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

In the Matter of:     **Ashwani K. Bhakhri**  
Membership No.:     **163521**  
State Bar Case Nos.: **06-O-11061 and 07-O-11274**

**DISMISSALS**

The State Bar of California ("the State Bar") dismisses Count Two (A) and Count Two (B) of the Notice of Disciplinary Charges ("NDC") in case numbers 06-O-11061 and 07-O-11274 ("the current cases").

**WAIVERS**

The parties waive all variances between the facts and conclusions of law asserted in the NDC and the facts and conclusions of law contained in this Stipulation.

**FACTS**

Respondent admits that the following facts are true:

1. In March 2003, Jose Crespo ("Crespo") hired respondent to pursue a cancellation of removal claim for non-permanent residents. Respondent continued representing Crespo in Crespo's immigration matters for all time periods relevant to this NDC.
2. On April 26, 2004, the immigration judge denied Crespo's application for cancellation of removal.
3. On April 30, 2004, respondent filed Crespo's notice of appeal, A75-546-106, with the Board of Immigration Appeals ("BIA"), appealing the immigration judge's decision finding Crespo removable. Crespo's opening brief was due on November 26, 2004. Respondent received timely notice of the briefing schedule.
4. After April 30, 2004, respondent failed to perform the services for which he was hired in a diligent and competent manner as follows:
  - Respondent did not file Crespo's opening brief until December 8, 2004.

- Respondent filed the opening brief without a Motion for Late Filing, which caused the Opening Brief filed on December 8, 2004, to be rejected by the BIA.
- Respondent filed his Motion to Accept Late Brief on March 23, 2005, but stated no good cause for the late filing, which caused the BIA to deny the Motion on or about April 1, 2005.

5. On May 10, 2005, the BIA denied Crespo's appeal. Respondent was timely notified of the denial.

6. On August 8, 2005, respondent filed Crespo's Motion to Reopen or Motion to Reconsider, with the BIA. Respondent's motion claimed new evidence that had not been available prior to the motion. On October 5, 2005, the BIA denied respondent's motion. The BIA noted that the evidence submitted failed to demonstrate material changes, which would warrant reopening the matter.

7. On December 20, 2005, Crespo received a letter informing him that he had exhausted his immigration appeals and that he had to depart the U.S.

8. In January 2006, Crespo terminated respondent's legal services and hired successor counsel.

9. On March 31, 2006, Crespo's successor counsel filed a Motion to Reopen and Stay of Removal with the BIA. The ground to re-open was ineffective assistance of counsel. On July 14, 2006, the BIA granted Crespo's motion, re-opened Crespo's immigration matter, and remanded the matter to the immigration judge.

10. Respondent failed to communicate significant developments relating to the employment in a timely manner as follows:

- On January 12, 2005, respondent sent Crespo a letter, informing Crespo that his appeal was still pending before the BIA. Respondent failed to state in his letter that he had failed to timely file the Opening Brief.
- On May 16, 2005, respondent sent Crespo a letter. In his letter, he informed Crespo that the BIA had dismissed Crespo's appeal. Respondent failed to state in his letter that the decision of the BIA was without the benefit of an Opening Brief on appeal.
- On October 10, 2005, respondent sent Crespo a letter notifying him that the BIA had dismissed his appeal on October 5, 2005. The letter further advised that he could file with the Ninth Circuit within 30-days or he could file a Motion to Reopen with the BIA within 90 days. Respondent failed to state in his letter that Crespo might have a legitimate ineffective assistance of counsel claim.

11. On December 20, 2005, respondent sent Crespo a letter, providing a copy of the Ninth Circuit order denying the Motion to Stay.

12. At no time did respondent inform Crespo of any of the following:

- Respondent had failed to timely file the Opening Brief with the BIA.
- Respondent had filed a Motion to Accept Late Brief.
- Respondent's Motion to Accept Late Brief had been denied and the Opening Brief had been rejected for filing.
- The BIA had not had the benefit of an Opening Brief prior to denying Crespo's appeal.
- Crespo might have a legitimate claim of ineffective assistance of counsel.

## CONCLUSIONS OF LAW

Respondent admits that the following conclusions of law are true:

1. In violation of rule 3-110(A) of the Rules of Professional Conduct, respondent repeatedly failed to perform legal services with competence (1) by failing to file a timely Opening Brief in Crespo's BIA appeal, (2) by failing to file a Motion to Accept Late filing when he finally did file the opening brief, and (3) by failing to place an opening brief on appeal properly before the BIA.

2. In violation of section 6068, subdivision (m) of the Business and Professions Code, respondent willfully failed to keep a client reasonably informed of significant developments in the client's matter by failing to inform Crespo (1) that no Opening Brief had been filed, (2) that he had filed a Motion to Accept Late Brief, (3) that the Motion to Accept Late Brief had been denied, (4) that the BIA had not had the benefit of an Opening Brief when it rendered its decision, and (5) that Crespo might have a legitimate claim against him for ineffective assistance of counsel.

## AGGRAVATION

**Prior Record of Discipline:** Respondent has a prior private reproof in State Bar case numbers 03-O-4586 and 04-O-13954.

**Harm:** Crespo had to hire a new attorney to complete his matter.

## MITIGATION

**Candor/Cooperation:** Respondent has displayed candor to, and cooperation with, the State Bar in resolving the current cases, especially by entering into this Stipulation.

**Good Faith:** Respondent believed in good faith that he had obtained an oral extension of time to file the Opening Brief in Crespo's matter.

**Good Character:** A wide range of persons in the legal and general communities have written letters indicating that they know of the disciplinary charges against respondent and still believe that he possesses good moral character.

**Community Service:** Respondent has provided substantial, ongoing service to the South Asian and Asian-Pacific communities.

## **SUPPORTING AUTHORITY**

The determination of discipline begins "by looking to the purpose of sanctions for attorney misconduct." (*In re Morse* (1995) 11 Cal.4th 184, 205.) Standard 1.3 provides: "The primary purposes of disciplinary proceedings . . . 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."

The standards provide guidance and deserve "great weight." (*In re Naney* (1990) 51 Cal.3d 186, 190; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 933, fn. 5.) "[A]dherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar misconduct." (*In re Naney, supra*, 51 Cal.3d at p. 190; see also *In re Brown* (1995) 12 Cal.4th 205, 220.) The California Supreme Court accepts a disciplinary recommendation resulting from application of the standards unless it has "grave doubts" about the recommendation's propriety. (*In re Morse, supra*, 11 Cal.4th at p. 206; *In re Lamb* (1989) 49 Cal.3d 239, 245.)

Standard 1.7(a) requires greater discipline in a second disciplinary proceeding than the discipline in a first disciplinary proceeding. Because the discipline in respondent's prior cases was a private reproof, standard 1.7(a) calls for at least a public reproof in the current cases.

Standard 2.4(b) provides that an attorney's willful failure to perform services in an individual matter or matters or willful failure to communicate with a client shall result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client. Pursuant to standard 2.4, respondent's violations of rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code in the current cases warrant a public reproof.

Because of the limited culpability and substantial mitigation in the current cases, a public reproof properly protects the public and serves the other purposes of attorney discipline.

## **ETHICS SCHOOL REQUIREMENT**

Within one year of the effective date of the discipline in the current cases, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar's Ethics School and passage of the test given at the end of that session.

### **ESTIMATED PROSECUTION COST**

The estimated prosecution cost of the current cases is \$ 4,279.00 This sum is only an estimate and the final cost may differ from the estimated cost. If this Stipulation is rejected or if relief from this Stipulation is granted, the prosecution cost of the current case may increase because of the cost of further proceedings.

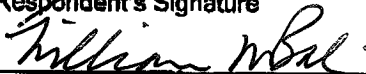
### **DATE OF DISCLOSURE OF ANY PENDING INVESTIGATION OR PROCEEDING**

On September 14, 2010, the State Bar sent a disclosure letter by e-mail to respondent's counsel, Mr. William Balin. In this letter, the State Bar advised Mr. Balin of any pending investigations or proceedings against respondent other than the current cases.

(Do not write above this line.)

In the Matter of  
**ASHWANI K. BHAKRI**  
No. 163521Case number(s):  
06-O-11061; 07-O-11274**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.

10-5-10  
Date  
Respondent's SignatureASHWANI K. BHAKRI  
Print Name10/6/10  
Date  
Respondent's Counsel SignatureWILLIAM BALIN  
Print Name10/6/10  
Date  
Deputy Trial Counsel's SignatureMARK HARTMAN  
Print Name

In the Matter Of  
**ASHWANI K. BHAKRI**  
No. 163521

Case Number(s):  
06-O-11061; 07-O-11274

**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 Order approving the Stipulation on Oct. 12, 2010  
is VACATED.

Court Administrator to insert p. 12 Signature Page  
from prior Stipulation onto this Stipulation.

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

Oct. 21, 2010

Judge of the State Bar Court

LUCY ARMENDARIZ

## 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 October 21, 2010, 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:

**WILLIAM M BALIN  
345 FRANKLIN ST  
SAN FRANCISCO, CA 94102**

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

**MARK HARTMAN**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 21, 2010.



---

Bernadette C.O. Molina  
Case Administrator  
State Bar Court