

(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
Los Angeles**

<p>Counsel For The State Bar</p> <p>Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000</p> <p>Bar # 228137</p>	<p>Case Number (s)</p> <p>06-O-11142 08-O-13908 (INV) 08-O-14346 (INV)</p> <p><b>PUBLIC MATTER</b></p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>DEC 16 2009</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>David Rule Yardley Law Offices of David R. Yardley 21243 Pacific Coast Highway Malibu, CA 90265 (310) 579-7640</p> <p>Bar # 89927</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of:</p> <p>David Rule Yardley</p> <p>Bar # 89927</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted November 29, 1979.
- (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 16 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".

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension



- (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):
- 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: 3 billing cycles following the effective date of the Supreme Court order.  
(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 95-C-12454
  - (b)  Date prior discipline effective July 7, 1996
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Misconduct did not involve moral turpitude but did constitute other misconduct warranting discipline.
  - (d)  Degree of prior discipline Private Reproval
  - (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.

(Do not write above this line.)

- (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. Respondent has willingly and openly acknowledged his misconduct and cooperated in these 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. Respondent immediately stopped improperly corresponding with Liberty Mutual and made efforts to return to active status.
- (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. Respondent experienced severe shingles outbreaks in 2003 which were directly related and caused his misconduct in the Bazik matter.
- (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. Respondent has experienced financial problems from 2003 which culminated in 2007.
- (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.

(Do not write above this line.)

- (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**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of Three 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 Three 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 Six Months.
- 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.

(Do not write above this line.)

- (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: \_\_\_\_\_
- (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 checked="" 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**

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

**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, 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): ATTACHMENT TO  
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID RULE YARDLEY, 89927  
CASE NUMBERS: 06-O-11142, 08-O-13908, 08-O-14346

**Case No. 06-O-11142**

**Facts**

1. On September 6, 1990, a petition for dissolution of marriage was filed on behalf of Hayk Bazik ("Hayk") against his spouse, Zhenia Bazik ("Zhenia"), in the Superior Court of California, County of Los Angeles ("Superior Court"), titled *Hayk Bazik v. Zhenia Bazik*, Case No. ED 000940 ("*Bazik v. Bazik*").
2. On April 16, 2001, Hayk employed Respondent to substitute into *Bazik v. Bazik* in place of his then attorney of record.
3. On May 8, 2001, the attorney representing Zhenia, Phyllis A. Walker of Holmes & Holmes ("Walker"), filed an "Order to Show Cause for Modification of Child Support, Spousal Support & Attorney Fees and Costs" ("OSC re Modification") in *Bazik v. Bazik*.
4. On June 28, 2001, Respondent filed a "Responsive Declaration to Order to Show Cause or Notice of Motion," which responded to the OSC re Modification in *Bazik v. Bazik*.
5. On November 28, 2001, Respondent failed to appear for the OSC re Modification in *Bazik v. Bazik*.
6. On January 24, 2002, February 28, 2002, and March 5, 2002, Respondent, Walker, and Robert K. Holmes of Holmes & Holmes ("Holmes") appeared for the bifurcated trial and OSC re Modification in *Bazik v. Bazik*. The Superior Court heard testimony and issued a "Statement of Intended Decision" on March 18, 2002.
7. On May 9, 2002, Walker filed a "Motion for Joinder" in *Bazik v. Bazik*. The motion noticed a hearing date of July 3, 2002. Respondent received a copy of the motion.
8. On June 10, 2002, Walker filed a "Motion to Release Balance of Verdugo Bank Funds" ("Motion to Release Funds") and "Motion to Reinstate Order to Show Cause for Modification of Child and Spousal Support" ("Motion to Reinstate OSC") in *Bazik v. Bazik*. The motions noticed a hearing date of July 3, 2002.
9. Respondent did not file a response to the Motions for Joinder, Release, or to Reinstate OSC.
10. On July 3, 2002, Respondent failed to appear for the hearings on the motions in *Bazik v. Bazik*. The Superior Court issued an OSC re Sanctions for Failure to Appear to be heard on August 2, 2002.
11. On July 10, 2002, Walker filed a "Notice of Order to Show Cause to Appear and for Sanctions against David R. Yardley" in *Bazik v. Bazik*. The hearing date was noticed for August 2, 2002.
12. On July 29, 2002, Respondent filed a "Responsive Declaration" to the Motion to Release Funds in *Bazik v. Bazik*. The response identified a hearing date of August 2, 2002, but was not timely filed.
13. On July 30, 2002, Respondent filed a "Responsive Declaration" to the Motion to Reinstate OSC in *Bazik v. Bazik*. The response identified a hearing date of August 2, 2002, but was not timely filed.

14. On August 2, 2002, Respondent failed to appear for the hearings on the motions in *Bazik v. Bazik*.
15. On August 6, 2002, a copy of the proposed "Order After Hearing (Joinders, Reinstatement OSC, Release Funds)" was served on Respondent in *Bazik v. Bazik*.
16. On August 29, 2002, the Superior Court signed the "Order After Hearing (Joinders, Reinstatement OSC, Release Funds)" in *Bazik v. Bazik*.
17. On October 11, 2002, the Court continued the OSC re Modification for November 7, 2002.
18. On August 4, 5, 6, and 7, 2003, Respondent, Walker and Holmes appeared for the trial in *Bazik v. Bazik*. The trial was continued to September 30, 2003 at 8:30 a.m.
19. On September 30, 2003, Respondent and his client failed to appear for the trial at 8:30 a.m. or 1:30 p.m. in *Bazik v. Bazik*. Walker and her client appeared at 8:30 a.m. and 1:30 p.m., and the Superior Court called Respondent and left four messages on his voice message system requesting that he contact the Court. The Court issued an OSC re Failure to Appear for Trial and Sanctions for November 3, 2003.
20. On October 7, 2003, the Superior Court issued an "Order and OSC re Failure to Appear for Trial and Sanctions" for November 3, 2003 in *Bazik v. Bazik*.
21. On Friday, October 31, 2003, Respondent filed a "Response to OSC for Failure to Appear for Trial and for Sanctions" in *Bazik v. Bazik*. The response was untimely filed.
22. On Monday, November 3, 2003, Respondent and Holmes appeared for the OSC re Sanctions, OSC re Evidentiary Sanctions, and trial setting conference in *Bazik v. Bazik*. The Superior Court continued the OSC re Sanctions and trial setting conference until November 14, 2003.
23. On November 14, 2003, Respondent failed to appear for the OSC re Sanctions, OSC re Evidentiary Sanctions, and trial setting conference in *Bazik v. Bazik*. Holmes appeared and the Superior Court issued an OSC re Sanctions for December 19, 2003.
24. On November 21, 2003, the Superior Court issued an "Order and Order to Show Cause for Failure to Appear at Mandatory Settlement Conference, Sanctions and Notice of New Trial Date" in *Bazik v. Bazik*.
25. On November 25, 2003, Walker filed a declaration seeking attorney fees and costs of \$7,175 for Respondent's failures to appear in *Bazik v. Bazik*.
26. On December 19, 2003, Respondent failed to appear for the OSC re Sanctions in *Bazik v. Bazik*. Hayk, Zhenia, and Holmes appeared and the Superior Court issued an order imposing sanctions of \$7,175 against Respondent payable to Holmes. The Court referred the matter to the State Bar and "admonished [Hayk] to pursue obtaining new counsel."
27. On December 19, 2003, Holmes filed a proposed "Order After Hearing" in *Bazik v. Bazik* and served it on Respondent.
28. On January 5, 2004, the Superior Court signed the proposed "Order After Hearing" in *Bazik v. Bazik*. That same day, subsequent counsel substituted in for Yardley by leave of court.
29. To date, Respondent has not paid the Court ordered sanctions of \$7,175 to Holmes.
30. Respondent did not report the imposition of the Court ordered sanctions of \$7,175 to Holmes to the State Bar.
31. Between on April 17, 1997 and on October 11, 2006, Respondent's then official State Bar membership records address was P.O. Box 2763, Malibu, California, 90265 (the "Malibu P.O. Box").

32. On January 23, 2006, the State Bar opened an investigation, Case No. 06-O-11142, pursuant to a complaint filed by Holmes (the "Holmes matter").
33. On April 3 and 18, 2006, a State Bar Investigator prepared letters to Respondent regarding the Holmes matter. The letters requested that Respondent provide a written response addressing whether the sanctions were paid and when. The letters were placed in sealed envelopes correctly addressed to the Respondent at the Malibu P.O. Box. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business.
34. The letters were returned by the U.S. Postal Service with the notations "Return to Sender [☐] Moved • Left No Address," "Return to Sender [☐] Box Closed - No Order" and "Return to Sender [☐] Attempted - Not Known [☐] Unable to Forward."

#### **Conclusions of Law**

35. By failing to pay the court ordered sanctions, Respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in willful violation of Business and Professions Code, section 6103.
36. By failing to report the Court ordered sanctions to the State Bar within 30 days of December 19, 2003, Respondent willfully failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time Respondent had knowledge of the imposition of any judicial sanctions against Respondent in willful violation of Business and Professions Code, section 6068(o)(3).
37. By failing to make appearances, file timely responses and appear for the trial, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
38. By failing to comply with the requirements of section 6002.1, which requires a member of the State Bar to maintain on the official membership records of the State Bar, the member's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes or purposes of the agency charged with attorney discipline, Respondent willfully violated Business and Professions Code section 6068(j).

#### **Case No. 08-O-13908 (INV.)**

#### **Facts**

39. From February 29, 2008 through July 1, 2008, Respondent wrote 18 checks out of his Client Trust Account, Bank of America account number xxxxx-xx187, for personal expenses.
40. At the time there were no client funds held in the CTA account.

#### **Conclusion of Law**

41. By using his CTA for his personal expenses, Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), by depositing or commingling funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import.

**Case No. 08-O-14346 (INV.)**

**Facts**

42. In May 2008, Giovanna Campos hired Respondent to represent her in a personal injury claim arising out of an auto accident. On May 12, 2008, Respondent sent a letter of representation to a Liberty Mutual adjustor on behalf of Campos.
43. On July 1, 2008, Respondent's status was changed from active to inactive.
44. On August 16, 2008, Respondent was suspended for failure to pay child support.
45. On September 10, 2008, Respondent submitted a lengthy settlement packet to Liberty Mutual. At the time, Respondent was administratively suspended for failure to pay child support and MCLE noncompliance.
46. On September 23, 2008, Respondent faxed a letter to Liberty Mutual requesting the speedy resolution to the claim.
47. On October 28, 2008 the Liberty Mutual claims adjuster advised Respondent of his inactive status.
48. On December 8, 2008, Respondent was reinstated for MCLE compliance. However, Respondent learned that he would remain inactive until he resolved the child support matter.
49. On April 7, 2009, Respondent received a release from child support restrictions on his license.
50. On April 14, 2009, Respondent's suspension was terminated and he was returned to active status.

**Conclusion of Law**

51. By performing acts constituting the unauthorized practice of law while not entitled to practice law, Respondent willfully violated Business and Professions Code sections 6125 and 6126.

**Other Circumstances**

From June 2003 through December 2003, Respondent became ill with a serious case of shingles which recurred and broke out across his face and body. Not only was it unsightly but it caused serious debilitating physical pain. At that time, Respondent delegated the task of contacting the court to his part time clerk. Respondent was reckless in supervising whether his clerk actually contacted the court.

In 2002, Respondent was undergoing personal family problems and his wife left with his son and moved out of state. During the latter half of 2002, Respondent was between states trying to obtain custody of his son through informal negotiations with his wife. Respondent neglected his office and relied on his part-time assistant to contact the court and request continuances due to family emergencies, but failed to follow up with his assistant and failed to follow up with the court and opposing counsel in *Bazik v. Bazik*.

Due to stress and other health problems, shingles returned again sporadically. In September 2003 through October 2003, Respondent's case of shingles was debilitating.

On January 5, 2004, judgment was entered in favor of creditor Holmes against debtor Respondent. In view of Respondent's financial condition and in light of other terms and

conditions, no disciplinary purpose would be further served by requiring repayment of the sanction in the *Bazik* matter as a condition of probation since a civil judgment is outstanding.

In 2004, Respondent took a hiatus from practicing law to assist and care for his friend who was dying from a terminal illness and living at another address. Respondent failed to regularly check his membership records mailing address.

When Respondent used his client trust account for personal expenses he did not hold client funds, it was during a period of time where his general account had been closed when checks were not paid due to nonsufficient funds caused by forged checks. Due to the incident, Respondent had difficulty finding a bank that would open a new account for him.

On July 1, 2008, a notice was sent to Respondent at his official membership records address, advising him of his not entitled status due to failure to comply with his MCLE requirements. That notice was returned to sender. On August 20, 2008, State Bar Member Services sent notice to Respondent at his official membership records address regarding his suspension for non compliance with child support obligations. The letter was returned to sender on September 16, 2005. Respondent did not receive written notice of his inactive status.

Sometime in September 2008, Respondent correctly presumed his status would be changed to inactive status in September 2008 due to his MCLE noncompliance. Respondent completed his MCLE in September 2008. Respondent incorrectly presumed that he was compliant with his MCLE requirements once he sent in proof of MCLE compliance in September 2008. Other than the two September 2008 letters Respondent immediately halted all other activities constituting the practice of law. After the improper conduct was brought to Respondent's attention by Liberty Mutual, Respondent immediately ceased all correspondence and representation of clients. His client found new counsel and was not harmed. (Std. 1.2(e)(vii).) In October 2008, due to financial difficulties, Respondent was not able to pay for the noncompliance fee and the reinstatement fee. From October 2008 through April 15, 2009, Respondent had no clients.

In November 2008, after learning that he would not be reinstated to active status until he paid fees and penalties, Respondent requested relief and waiver of fees and penalties associated with reinstatement after MCLE noncompliance which was granted.

### **Aggravation**

Respondent has a prior 1996 private reproof in case no. 95-C-12454 which resulted from a DUI conviction arising out of a January 1995 incident. The discipline is given diminished aggravating weight as it was many years ago and did not involve clients or client funds. (Std. 1.2(b)(i).)

### **Mitigation**

Respondent has suffered from several ailments over the years, especially severe facial shingles – varicella-zoster virus, causing severe debilitating headaches, extreme sensitivity to light, flu-like symptoms, and painful skin rash. The severe shingles Respondent experienced in 2003

contributed to his failure to perform in the Bazik matter. The shingles outbreaks have not recurred since early 2004. (Std. 1.2(e)(iv).)

Respondent suffers from severe financial difficulties. His client-base has diminished due to his health issues and he could not afford to pay the sanctions order. Respondent is destitute. Respondent lost his law office, vehicle, and his home due to his financial hardship. Respondent's present focus is on regaining the basic necessities.

Respondent has been candid and cooperative. (Std. 1.2(e)(v); *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079; *Pineda v. State Bar* (1989) 49 Cal.3d 753, 760.) Respondent served as a volunteer in his community by performing pro bono work until his financial circumstances prevented him from participating. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.)

Respondent has provided two character reference letters from an attorney and a nonprofit charity where Respondent had volunteered many hours of service. (Std. 1.2(e)(vi).) These letters attested to his character, integrity and honesty even with the knowledge of the misconduct and believe that the conduct was due to his extenuating circumstance and error and will not recur. (Std. 1.2(e)(vi).)

#### **WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.**

The parties waive any variance between the Notice of Disciplinary Charges filed on December 4, 2008 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was November 20, 2009.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 20, 2009, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only and that it might not include State Bar Court costs that will be included in any final cost assessment (see Bus. & Prof. Code section 6068.10(c)) or taxable costs (see C.C.P. section 1033.5(a)), which will be included in any final cost assessment. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings. It is also noted that if Respondent fails to pay any installment of disciplinary costs within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision(c), the remaining balance of the costs is due and payable immediately unless relief has been granted under the Rules of Procedure of the State Bar

of California (Rules Proc. of State Bar, rule 286). The payment of costs is enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The purposes of imposing sanctions for professional misconduct 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. (Std. 1.3; *In re Morse* (1995) 11 Cal.4th 184, 205, Std. 1.3; *Tarver v. State Bar* (1984) 37 Cal.3d 122, 133, 207 Cal.Rptr. 302, 688 P.2d 911; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In order to properly fulfill the purposes of lawyer discipline, we must review the nature and extent of the facts and circumstances surrounding the misconduct. The determination of discipline involves an analysis of the standards and on balance with any mitigation and aggravation. (Std. 1.6(b). *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1089; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.)

Suspension falls within the standards. (Std. 2.4(b) for failure to perform – reproof to suspension; Std. 2.6 for violations of Business and Professions Code sections 6103, 6126, 6068 – suspension to disbarment.) Standard 2.2(b) provides for at least a three month actual suspension for commingling in violation of Rules of Professional Conduct, rule 4-100(A).

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney was suspended from the practice of law for failure to pay his annual membership fees while he was representing a single client in a personal injury case. The attorney did not inform the client of his suspension and misled her into believing that he was actively working on the case. The Review Department found the attorney culpable of violating section 6106 by misleading the client into believing that he was working on her case and, additionally, found him culpable of failing to communicate with the client and failing to competently perform the legal services for which he was retained. The attorney was also found culpable of failing to cooperate with a disciplinary investigation. In mitigation, the attorney had no record of prior discipline in 12 years of practice. The Review Department recommended that the attorney be actually suspended from the practice of law for a period of 60 days.

In *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, the attorney deposited personal funds in his client trust accounts and used those accounts for his personal expenses during a three year period. The Review Department recommended a six month actual suspension.

In *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, the attorney improperly used his trust account as a personal account, and committed other acts of misconduct. The Review Department recommended a six month actual suspension. (*Id.* at 628.)

Here, Respondent's misconduct was more serious than the attorney in *Johnston* and as related to the commingling matter was less serious than the attorneys in *Doran* and *Koehler*. Thus, six months actual suspension is appropriate.

In the Matter of <b>David Rule Yardley</b>	Case number(s): <b>06-O-11142</b> <b>08-O-13908</b> <b>08-O-14346</b>
A Member of the State Bar	

**Financial Conditions**

**a. Restitution**

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

**b. Installment Restitution Payments**

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

**c. Client Funds Certificate**

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
    1. the name of such client;
    2. the date, amount and source of all funds received on behalf of such client;
    3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
    4. the current balance for such client.
  - ii. a written journal for each client trust fund account that sets forth:
    1. the name of such account;
    2. the date, amount and client affected by each debit and credit; and,
    3. the current balance in such account.
  - iii. all bank statements and cancelled checks for each client trust account; and,
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



(Do not write above this line.)

In the Matter Of <b>David Rule Yardley</b>	Case Number(s): <b>06-O-11142</b> <b>08-O-13908 (INV)</b> <b>08-O-14346 (INV)</b>
---	--

**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.)**

12-8-09  
Date

*George Scott*  
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 December 16, 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 Los Angeles, California, addressed as follows:

DAVID RULE YARDLEY  
LAW OFFICES OF DAVID R YARDLEY  
21243 PACIFIC COAST HWY  
MALIBU, CA 90265

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:

Jean Hee Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 16, 2009.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court