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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Bita Shasty 1149 S. Hill Street Los Angeles, California 90015 Bar # 225177	Case Number (s) 06-O-11252-DFM; Investigation Nos. 09-O-19315, 08-O-14892, 09-O-10379	(for Court's use) <div align="center"> FILED JUL - 7 2010 <i>Y/c</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER </div>
Counsel For Respondent David Alan Clare David A. Clare, Attorney At Law 444 W. Ocean Blvd., Ste 800 Long Beach, California 90802 Bar # 44971	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: JON R. KNISS Bar # 141454 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 **July 17, 1989**.
- (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".
- (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: **Two 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 **98-O-00324**
- (b) ☒ Date prior discipline effective **November 1, 2000**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **rule 3-110(A), B&P 6068(m), rule 3-400(b)**
- (d) ☒ Degree of prior discipline **Private Reprimand**
- (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. **See Attachment Page 14.**
- (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. **See Attachment Page 14.**
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

See Attachment Page 14

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **1 year**.

- 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 **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 **1 year**.
- 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: .
- (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 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule

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within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (3) ☒ **Conditional Rule 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:** The parties agree that this stipulation will have no effect on Respondent's participation in the Alternative Discipline Program ("ADP") and may not be used as the basis to terminate Respondent from participation in ADP.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **JON R. KNISS**

CASE NUMBERS: **06-O-11252, Investigation Nos.: 09-O-19315, 08-O-14892, 09-O-10379**

FACTS AND CONCLUSIONS OF LAW

Respondent, Jon R. Kniss ("Respondent") admits that the following facts are true and that he is culpable of violating the specified statute and/or Rules of Professional Conduct.

FACTS RE CASE NO. 06-O-11252 (ONDREJKO)

1. On May 12, 2004, a civil action for patent and trademark infringement was filed in the United States District Court for the District of Arizona, titled 9969 *Industries, Inc., dba ADA Racing v. Sikktoys, L.L.C. ; X Factor Racing; and Kenneth Ondrejko, Jr.*, Case No. CIV 04-0973-PHX-SMM (the "ADA Racing Lawsuit" or "lawsuit"). On May 18, 2004, the plaintiff in the lawsuit filed a motion for preliminary injunction.
2. Complaining witness Kenneth Ondrejko ("Ondrejko") was the President of X Factor Racing, Inc. ("X Factor Racing"); and the managing member of SikkToys, LLC ("SikkToys") (collectively referred to as the "Ondrejko parties").
3. ADA Racing and SikkToys were competing businesses that design, manufacture, and sell aftermarket performance parts for the power sports industry. In the lawsuit, ADA Racing alleged, *inter alia*, that the Ondrejko parties were manufacturing, offering for sale and selling a product (the Sikk Series S1 Pipe) which was confusingly similar to ADA Racing's ADA Series 1™ exhaust system ("S1™" or the "Pipe").
4. In May 2004, Ondrejko employed Respondent to represent the Ondrejko parties in the lawsuit.
5. In June 2004, Respondent filed a motion for admission *pro hac vice* to represent the Ondrejko parties in the District Court case. The motion was granted.
6. On June 2, 2004, Respondent filed an answer in the ADA Racing lawsuit on behalf of the Ondrejko parties; and on June 25, 2004, Respondent filed an opposition to the motion for preliminary injunction on behalf of the Ondrejko parties.
7. On September 2, 2004, the Court filed an Order of Preliminary Injunction in the ADA Racing lawsuit. The Order enjoined the Ondrejko parties, their officers, agents, servants, employees, distributors, dealers, and any other "persons in active concert of participation" with the Ondrejko parties from, *inter alia*, advertising, promoting, selling, and/or distributing the Sikk Series 1 Pipe. On September 2, 2004, the Court served the Order of Preliminary Injunction on Respondent at his office address. However, Respondent was out of town at that time and failed to alert his office about any possibility of an injunction being received. Respondent also failed to send the notice to Ondrejko for

four or five days after its receipt during which time Ondrejko violated the preliminary injunction by conducting two sales of the product.

8. On September 24, 2004, Respondent received discovery requests from the plaintiff in the ADA Racing lawsuit on behalf of Ondrejko. On October 27, 2004, Respondent sent plaintiff's counsel discovery responses which were mostly boilerplate objections.

9. On September 29, 2004, the plaintiff in the ADA Racing lawsuit filed a joint motion for order to show cause and for order of civil contempt alleging that the Ondrejko parties had violated the Preliminary Injunction filed by the Court on September 2, 2004.

10. On October 29, 2004, Respondent filed an opposition to the joint motion for order to show cause and for order of civil contempt on behalf of the Ondrejko parties.

11. Beginning about September 23, 2004, through October on or about October 22, 2004, Respondent and ADA Racing's attorney engaged in oral and written communications with respect to a stipulated Protective Order. The parties in the ADA Racing lawsuit were unable to stipulate to an amenable Protective Order.

12. Consequently, on November 10, 2004, the plaintiff in the ADA Racing lawsuit filed a joint motion for protective order. Although Respondent received the motion, he did not file an objection, memorandum, or any response whatsoever to the motion. Respondent's non-response was deemed consent to the granting of the motion.

13. Accordingly, on December 10, 2004, the Court filed a Confidentiality and Protective Order. Respondent did not advise Ondrejko of the Confidentiality and Protective Order and that the Court awarded reasonable attorneys' fees and costs against Ondrejko. The Court subsequently ordered Ondrejko to pay the plaintiff \$2,385.25 in attorneys' fees related to its motion for protective order. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order.

14. On January 3, 2005, the Court held a hearing on the joint motion for order to show cause and for order of civil contempt against the Ondrejko parties. Respondent and Ondrejko appeared at the January 3, 2005, hearing. At the conclusion of the hearing, the Court took the matter under advisement with an order to follow. On January 5, 2005, the Court filed an Order finding the Ondrejko parties in civil contempt, and ordering them to immediately comply with the Preliminary Injunction Order, and pay a \$6,000 fine and reasonable attorneys' fees and costs to the plaintiff. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order. The Court subsequently ordered Ondrejko to pay \$25,679.90 in attorneys' fees to the plaintiff for costs incurred in connection with the joint motion for order to show cause and for order of civil contempt. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order.

15. On January 5, 2005, the Court also entered an Amended Confidentiality and Protective Order. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order.

16. On February 15, 2005, the Court conducted a telephonic status conference at the request of the plaintiff in the ADA Racing lawsuit concerning Ondrejko's failure to comply with the discovery

requests served on September 24, 2004. Respondent appeared telephonically on behalf of Ondrejko. On February 25, 2005, the Court filed an Order directing Ondrejko to, *inter alia*, fulfill all outstanding discovery requests by 5:00 p.m. on Friday, March 11, 2005, produce certain information, and pay certain outstanding amounts due by April 4, 2005. The Court also warned that further contempt of orders issued by the Court could result in imprisonment. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order.

17. After February 15, 2005, Respondent ceased all communication with Ondrejko. From on or about March 1, 2005, to August 2, 2005, Ondrejko called Respondent at least thirty-two times, each time leaving a message requesting a status update on the District Court case. Respondent did not return Ondrejko's messages.

18. After February 15, 2005, Respondent ceased to take any legal action on behalf of Ondrejko in connection with the ADA Racing lawsuit, including responding to motions filed by the plaintiff in the lawsuit.

19. On February 23, 2005, the plaintiff in the lawsuit filed a second motion for order to show cause and for order of civil contempt as to the Ondrejko parties; and on March 25, 2005, the plaintiff filed a third motion for order to show cause, for order of civil contempt, and for entry of default judgment. Respondent received both motions but neither advised Ondrejko of the motions nor provided him with a copy of the motions. Respondent also did not respond to either motion.

20. On April 28, 2005, the Court issued an order to show cause setting a contempt hearing for May 16, 2005. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order. On May 16, 2005, the Court struck the Ondrejko parties' answer, entered default against them, and set a hearing on damages. Respondent received the Order but neither advised Ondrejko of the Order nor provided him with a copy of the Order.

21. On August 23, 2005, the Court held the hearing on damages incurred by plaintiff. Respondent neither filed a brief in preparation of the damages hearing nor appeared on behalf of the Ondrejko parties. On September 8, 2005, the Court entered a default judgment in the ADA Racing lawsuit against Ondrejko for over \$4.7 million in damages, \$250,000 in punitive damages, and fees and fines previously assessed against Ondrejko. Respondent received the September 8, 2005 Order but did not advise Ondrejko of the judgment entered against him and the Ondrejko parties during the 30-day appeal period.

22. Subsequently, Ondrejko retained new counsel and successfully negotiated with ADA Racing to settle the ADA lawsuit. In connection with that settlement, Ondrejko paid ADA Racing \$250,000, and also agreed to pay ADA Racing 50% of the net proceeds from any legal malpractice suit against Respondent after payment of the fees and costs incurred in the malpractice suit. In July 2007, Ondrejko obtained a judgment against Respondent in a malpractice suit in the sum of \$677,254.20. On August 21, 2008, the judgment and the damage award was affirmed by the Arizona Court of Appeals.

CONCLUSIONS OF LAW RE CASE NO. 06-O-11252 (ONDREJKO)

23. By not: (1) timely informing the Ondrejko parties of the preliminary injunction; (2) responding to the joint motion for protective order; (3) advising Ondrejko of the award of attorneys' fees to the plaintiff for costs incurred in connection with bringing the joint motion for protective order; (4)

advising Ondjreko of the Court's December 10, 2004 Confidentiality and Protective Order; (5) advising Ondrejko of the Court's January 5, 2005, Order finding the Ondrejko parties in contempt, and the subsequent award of attorneys' fees to the plaintiff; (6) advising Ondrejko of the Court's February 25, 2005, Order ordering Ondrejko, to *inter alia*, fulfill all outstanding discovery requests; (7) responding to the plaintiff's motions subsequent to February 14, 2005; (8) appearing on behalf of the Ondrejko parties at the May 16, 2005, OSC hearing; (9) filing a brief on behalf of the Ondrejko parties a brief in preparation of the August 23, 2005, damages hearing; and (10) appearing on behalf of the Ondrejko parties at the August 23, 2005, damages hearing, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in violation of rule 3-110(A) of the Rules of Professional Conduct.

24. By not responding to Ondrejko's telephone messages requesting a status update of the ADA Racing lawsuit after February 15, 2005, Respondent failed to respond to the reasonable status inquiries of a client, in violation of Business and Professions Code section 6068(m).

25. By not: (1) timely informing the Ondrejko parties of the preliminary injunction; (2) advising Ondrejko of the award of attorneys' fees to the plaintiff for costs incurred in connection with bringing the joint motion for protective order; (3) advising Ondjreko of the Court's December 10, 2004 Confidentiality and Protective Order; (4) advising Ondrejko of the Court's January 5, 2005, Order, finding the Ondrejko parties in contempt and the subsequent award of attorneys' fees to the plaintiff; (5) advising Ondrejko of the January 5, 2005, Amended Confidentiality and Protective Order; (6) advising Ondrejko of the Court's February 25, 2005, Order, which, *inter alia*, warned of potential imprisonment; (7) advising Ondrejko of the default judgment of May 16, 2005; and (8) advising Ondrejko of the September 8, 2005, judgment entered against the Ondrejko parties, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to perform legal services, in violation of Business and Professions Code section 6068(m).

FACTS RE CASE NO. 09-O-10379 (HAVANIS)

26. On August 9, 2004, Kelly Havanis ("Havanis") employed Respondent to represent him in a products liability claim against a manufacturer who produced the work gloves his employer required him to wear. Respondent agreed to represent Havanis on a contingency fee basis. A retainer was signed by Havanis and Respondent on the same date.

27. Respondent suggested Havanis proceed with the workers compensation aspect of the case by seeking the aid of an attorney.

28. On July 28, August 3 and August 9, 2005, Havanis left approximately three telephone messages with Respondent's office inquiring about the status of his product liability matter and requested that Respondent return the calls. Respondent received the messages. Respondent did not return the calls.

29. In January 2007, Havanis spoke to Respondent and told him that his workers compensation case was still pending and asked Respondent if he needed any information regarding that matter. Respondent told Havanis that the outcome of the workers compensation case determined what would happen in his product liability case.

30. From October 2008 through December 2008, Havanis left approximately twenty-five telephone messages with Respondent's office inquiring about the status of his product liability matter and requested that Respondent return the calls. Respondent received the messages. Respondent did not return the calls.

31. On November 18, 2008, Havanis sent a letter via certified mail to Respondent inquiring whether Respondent had filed anything with court because the statute of limitations in the case would soon expire. Respondent received the letter. Respondent did not respond to Havanis's letter.

32. Respondent failed to perform any legal services after the signing of the retainer agreement.

CONCLUSIONS OF LAW RE CASE NO. 09-O-10379 (HAVANIS)

33. By failing to perform any legal services after the signing of the retainer agreement, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), Rules of Professional Conduct.

34. By failing to respond to Havanis's telephone calls and letter, Respondent failed to respond to a client's reasonable status inquiries, in willful violation of Business and Professions Code, section 6068(m).

FACTS RE CASE NO. 08-O-14892 (CRUTCHFIELD)

35. On April 20, 2007, Marjorie Crutchfield ("Crutchfield") employed Respondent to represent her in a medical malpractice matter. Respondent agreed to represent Crutchfield on a contingency fee basis. A retainer was signed by Crutchfield and Respondent on the same date.

36. On July 27, 2007, Respondent filed a complaint in Los Angeles County Superior Court entitled *Marjorie Crutchfield v. Kamran Ghadimi, M.D.*, case no. YC055638 ("medical malpractice matter").

37. After two continuation of trial dates, the trial was set for November 24, 2008. On October 8, 2008, Crutchfield sent a letter to Respondent and told him she had been leaving messages on both his cellular and office phones but has not received a response from him. She further asked Respondent to contact her to discuss the status of her case and preparation for trial. Respondent received the letter. Respondent did not respond to Crutchfield's letter.

38. Crutchfield then contacted attorney David Koller ("Koller") and retained him as her attorney. Koller reviewed the court docket and found that the defendants had filed a motion to have the November 24, 2008 trial date continued or in the alternative that Crutchfield be precluded from introducing expert medical testimony.

39. The basis for the defendant's request was that plaintiff did not produce her experts for deposition at the time duly noticed and defense counsel's efforts to reach Respondent regarding the scheduling of plaintiff's expert witnesses' depositions had been unsuccessful.

40. On November 14, 2008 Koller wrote to Respondent requesting a meeting with him to discuss the status of Crutchfield's case. Respondent received the letter. Respondent did not respond to Koller's letter.

41. On November 28, 2008, Koller again wrote to Respondent requesting a meeting. Respondent received the letter. Respondent did not respond to Koller's letter.

42. On January 7, 2009, Koller filed a Notice of Application for Order Substituting Attorney.

CONCLUSIONS OF LAW RE CASE NO. 09-O-10379 (CRUTCHFIELD)

43. By failing to respond to Crutchfield's telephone calls and letter and by failing to respond to Koller's letters, Respondent failed to respond to a client's reasonable status inquiries, in willful violation of Business and Professions Code, section 6068(m).

FACTS RE CASE NO. 09-O-19315 (CRITTENDON)

44. On January 15, 2007, Cleberon Crittendon ("Crittendon") employed Respondent to represent him in a personal injury case. Respondent and Crittendon verbally agreed to a 25% contingency fee.

45. On August 28, 2007, Respondent filed a complaint in Los Angeles County Superior court entitled *Cleberon Crittendon v. State of California, CALTRANS, City of Long Beach*, case no. NC05184 ("personal injury matter").

46. On October 3, 2008, the defendants filed a Motion for Summary Judgment. Respondent was served with and received the Motion for Summary Judgment.

47. On December 8, 2008, Respondent filed and was granted an extension to file the Opposition to Motions for Summary Judgment.

48. Respondent failed to respond to Motion for Summary Judgment.

49. On January 21, 2009, Judgment in favor of defendants was entered

50. In January 2009, Crittendon contacted and spoke with Respondent regarding the time of a court date set for the following day. Respondent advised Crittendon that the court date had been continued and that he would contact Crittendon with the new court date.

51. From February 2009 to November 2009, Crittendon called and left voice messages, sent text messages, sent emails and tried to reach Respondent through intermediaries to return his messages. Respondent received but did not respond to Crittendon's messages.

52. In October 2009, Crittendon went to court to view his case file and found that his case had been concluded following a Motion for Summary followed by the Judgment in favor of the defendants.

CONCLUSIONS OF LAW RE CASE NO. 09-O-19315 (CRITTENDON)

53. By not responding to the Motion for Summary Judgment, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), Rules of Professional Conduct.

54. By failing to respond to Crittendon's telephone calls, emails and text messages, Respondent failed to respond to a client's reasonable status inquiries, in willful violation of Business and Professions Code, section 6068(m).

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 November 30, 2006, in case no. 06-O-11252, 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 a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS

The disclosure date referred to on Page 2, paragraph A.(7), was made on June 9, 2010.

DISMISSALS

The parties respectfully requests that the Court dismiss in the interest of justice the following alleged violation in the Notice of Disciplinary Charges ("NDC") herein filed on November 30, 2006 in the Ondrejko matter:

Case No.	Count	Alleged Violation
06-O-11252	Four	Business and Professions Code § 6106

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 15, 2010, the costs in this matter are approximately \$5,511. 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 costs of further proceedings.

AGGRAVATING CIRCUMSTANCES

Prior Record of Discipline. (Standard 1.2(b)(i))

Respondent has a prior record of discipline. This is an aggravating circumstance under Standard 1.2(b)(i) of the Standards for Attorney Sanctions for Professional Misconduct ("Standards"). On November 10, 2000, Respondent was privately reprovred in a matter titled, *In the Matter of Jon R. Kniss*, State Bar Case No. 98-O-00324. That private reprovral was imposed on Respondent in accordance with

a stipulation as to facts, conclusions of law, and disposition that Respondent entered into with the State Bar before a notice of disciplinary charges was filed and that the State Bar Court approved in an order filed on October 11, 2000. The stipulation conclusively establishes that Respondent violated: (1) rule 3-110(A) of the Rules of Professional Conduct; (2) Business and Professions Code section 6068(m); and (3) rule 3-400(b) of the Rules of Professional Conduct.

Multiple Acts of Misconduct. (Standard 1.2(b)(ii))

In four separate client matters, Respondent failed to perform, failed to respond to clients' reasonable status inquiries and failed to inform client of significant development.

Harm. (Standard 1.2(b)(iv))

By failing to perform legal services with competence in the Ondrejko matter, resulting in a default judgment of over \$5,000,000 against the Ondrejko parties, Respondent harmed the client financially as an additional \$120,000 were spent on attorneys fees to settle the matter.

MITIGATING CIRCUMSTANCES

Respondent has been enrolled in the Alternative Discipline Program ("ADP") since on or about April 30, 2007, and has been enrolled in the Lawyers Assistance Program ("LAP") since before that date. He is in good standing in those programs and his participation is on-going. All of the events in Ondrejko matter occurred prior to the time that Respondent was diagnosed and treated for his mental illness and before he was enrolled in the LAP and receiving proper treatment. A nexus has been found in the ADP between all misconduct committed by Respondent during the Ondrejko time frame to his then undiagnosed mental illness, and the misconduct in Ondrejko is similar to that stipulated to by Respondent in the ADP. (See, e.g., *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229. There is the same nexus here.

AUTHORITIES SUPPORTING DISCIPLINE.

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

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

Standard 1.7 (a) addresses the effects of prior discipline as follows: "If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current

proceeding would be manifestly unjust.”

Standard 2.4(b) provides that “culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct . . . shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.” Respondent failed to perform in three different client matters in the instant case.

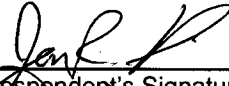
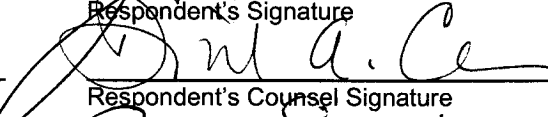
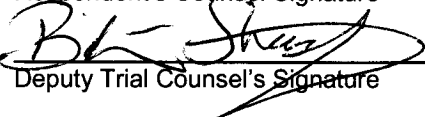
Standard 2.6(a) provides that Respondent’s violations of Business and Professions Code, section 6068 shall result in suspension or disbarment “depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.” Respondent is culpable of violating five counts of Business and Professions Code, section 6068(m) in four different client matters.

(Do not write above this line.)

In the Matter of JON R. KNISS, No. 141454	Case number(s): 06-O-11252-DFM; Investigation Nos.: 09-O-19315, 08-O-14892, 09-O-10379
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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>6/25/10</u> Date	 Respondent's Signature	<u>JON R. KNISS</u> Print Name
<u>6/28/10</u> Date	 Respondent's Counsel Signature	<u>DAVID A. CLARE</u> Print Name
<u>6/29/10</u> Date	 Deputy Trial Counsel's Signature	<u>BITA SHASTY</u> Print Name

(Do not write above this line.)

In the Matter Of JON R. KNISS, No. 141454	Case Number(s): 06-O-11252-DFM Investigations Nos. 09-O-19315, 08-O-14892, 09-O-10379
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, ^{DFM}
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.

On page 2, the following language is inserted at paragraph A.(8): It is further recommended that if Jon Randolph Kniss 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."

On page 4, an "X" is inserted in the box at paragraph D.(3)(a).

On page 6, the "X" in the box at paragraph F.(3) is deleted.

On page 10, paragraph 23, line 9 (from the top of the page), the word "willful" is inserted between "in" and "violation".

It is further recommended that Jon Randolph Alexander be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

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.)**

Date

7/2/10

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 July 7, 2010, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING ACTUAL SUSPENSION**

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

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

BITA SHASTY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 7, 2010.



Tammy Cleaver
Case Administrator
State Bar Court