

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

<p>Counsel For The State Bar</p> <p><b>Manuel Jimenez</b> State Bar of California 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 218234</p>	<p>Case Number (s)</p> <p>06-O-12003 06-O-13269 05-C-2624 04-C-10513 04-C-10238</p>	<p>(for Court's use)</p> <p style="text-align: center;"><b>PUBLIC MATTER</b></p> <p style="text-align: center;"><b>FILED</b> <i>LOS</i></p> <p style="text-align: center;">MAY 03 2007</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p><b>Arthur K. Wachtel</b> Attorney At Law 170 Columbus Avenue, Suite 100 San Francisco, CA 94133</p> <p>Bar # 84086</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><b>James P. Swanseen</b></p> <p>Bar # 159918</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 **October 15, 1992**.
- (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: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **In the Surya Ratnam matter, Respondent, pursuant to a written fee agreement entered into with Mr. Surya Ratnam to represent Mr. Ratnam's son, Vinesh Ratnam in a criminal matter took possession of a 1993 Ford van as collateral to ensure payment of a retainer and future attorney's fees. Contrary to the express terms of the contract, respondent operated and drove Ratnam's van, putting 7,423 miles on it. On May 10, 2005, respondent was driving the van when he was arrested for violation of Health and Safety Code section 11377(a), possession of a controlled substance - methamphetamine. While in respondent's possession, the van was damaged.**
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **In the matter of People v. Hillgardner, Contra Costa Superior Court, Case No. 281081, the respondent repeatedly failed to appear in court for properly noticed court hearings and Orders to Show Cause, resulting in sanctions. Respondent failed to pay the sanctions in a timely manner.**

(Do not write above this line.)

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- (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.
- (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. **Respondent suffered from severe dental disease, resulting in the loss of his teeth, causing pain and interfering with his ability to function.**
- (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. **Respondent has been the sole care provider of his elderly mother while she was ill.**
- (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. **Respondent was required, under Proposition 36, to complete a drug treatment program. Respondent has participated in treatment for the last twelve months, and continues to participate. His participation includes random drug testing and therapy.**
- (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 **two 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 (3) 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 **sixty (60) days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
  - No Ethics School recommended. Reason: .
- (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:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       Financial Conditions

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

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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: See Below; II. Other Conditions**

Attachment language begins here (if any):

I. Misconduct

04-C-10513

On May 24, 2003, respondent was charged with violation of Vehicle Code sections 14601.1(a) [Driving When Privilege Suspended or Revoked] and 16028(a) [Failure to Provide Evidence of Financial Responsibility Upon Request]. On December 18, 2003, respondent was convicted pursuant to a plea agreement with violation of Vehicle Code section 14601.1(a), unlawfully driving a motor vehicle when driving privilege was suspended and revoked for failure to appear with knowledge of such suspension or revocation, a misdemeanor and. The charge of violating Vehicle Code section 16028(a) was dismissed in the furtherance of justice. On May 3, 2004, said conviction was reduced to violation of section 12500(A) of the Vehicle Code,

The facts and circumstances surrounding the conviction are these: On May 13, 2003, police officer Travis R. Higgins (shield no. 269) and police officer James T. McVeigh (shield no. 231) pulled the respondent over for a Vehicle Code infraction. During the stop, the police officers determined that the respondent was driving on a suspended driver's license. Respondent did not have proof of insurance.

04-C-10238

On December 17, 2003, respondent was charged with violation of Health and Safety Code section 11377(a), [Possession of a Controlled Substance], a felony; and violation of Health and Safety Code section 11364 [Possession of a Smoking Device – Controlled Substance]. On April 20, 2004, respondent was convicted pursuant to a plea agreement of violation of 11377(a), which was reduced to a misdemeanor.

The facts and circumstances surrounding the conviction are these: On December 16, 2003, at approximately 11:11 p.m., police officer Brandon Austin ("PO Austin") observed the respondent and two other people enter a vehicle. PO Austin observed the vehicle's license plate light to be out. "PO Austin" pulled over the vehicle. PO Austin observed respondent to be frantically reaching into his pockets and making motions as if he was moving things from the vehicle and placing them in his pockets.

PO Austin asked respondent if he could search the vehicle, and respondent declined. PO Austin issued respondent a citation for violation of 12951(a) [Possession of a Valid Driver's License – Expired] of the Vehicle Code. Respondent had his passengers leave the vehicle, locked the doors, and proceeded to walk home. After the passengers left, PO Austin observed in plain view a small clear, plastic, Zip-lock bag that appeared to contain a substance that he suspected to be cocaine. PO Austin pursued respondent, to his residence, but respondent entered the residence.

Subsequently, respondent's vehicle was searched. PO Austin recovered a glass smoking pipe, a film container that had residue in it, and the bag of suspected narcotics. The substance was tested, and shown to be methamphetamine.

05-C-02624

On December 18, 2005 respondent was charged with violation of section 11377(a) of the Health and Safety Code [Possession of a Controlled Substance, to wit, methamphetamine], a felony; and violation of Health and Safety Code section 11364 [Possession of a Smoking Device – Controlled Substances]. On December 22, 2005, respondent was convicted pursuant to a plea agreement with violation of Health and

Safety Code section 11377(a) as a misdemeanor. The Court dismissed the charge of violating section 11364 of the Health and Safety Code.

The facts and circumstances surrounding the conviction are these: On May 10, 2005, police officer J. Vallee (shield no. 221), and police officer Hulquist observed respondent operating a red Ford van (belonging to complainant Surya Ratnam, *infra*). PO Hulquist recognized the driver as the respondent, and had PO Vallee run a wants/warrant check and driver's license check. PO Vallee received information that the respondent's license was suspended.

The police officers stopped respondent. When asked for the registration, respondent replied, "The van is mine, it was given to me by someone who owed me money." The police officers conducted a consent search of the vehicle and respondent. The police officers found a small Ziploc baggie filled with a white powdery substance in a bicycle handlebar grip pad, located within a black bag. The substance tested positive for methamphetamine.

#### 06-O-12003

On August 5, 2004, Surya Ratnam ("Complainant") employed respondent to represent his son, Vinesh Ratnam ("Client"), in connection with a criminal matter pending in Alameda County, California. Respondent and the Complainant entered into a fee agreement, which, in part, required the Complainant to transfer the certificate of title and physical custody of Complainant's 1993 Ford van, as security collateral. The fee agreement specified, "...Attorney agrees not to use the vehicle." Respondent took possession Complainant's van, and the certificate of title. Respondent failed to obtain the Complainant's written consent regarding the terms of the transaction, nor did he advise Complainant in writing that he could seek the advice of an independent lawyer, and failed to give Complainant a reasonable opportunity to seek that advice. Respondent damaged complainant's van while it was in his possession. On May 10, 2005, respondent drove Complainant's vehicle with a suspended driver's license. Respondent was pulled over, and arrested for violation of Health and Safety Code section 11377(a) (possession of a controlled substance – methamphetamine), to which he pled guilty on December 22, 2005. Complainant's car was impounded. Respondent subsequently promised to pay for the repair of the van, and failed to return the certificate of title.

By accepting fees from a non-client, respondent violated Rules of Professional Conduct, rule 3-310(F). By acquiring an interest adverse to his client, respondent violated Rules of Professional Conduct, 3-300

#### 06-O-13269

Respondent represented Kenneth Hillgardner ("Client") in a criminal matter entitled, *People v. Hillgardner*, Contra Costa Superior Court Case Number 281081-O. On June 21, 2004, respondent failed to appear at a court hearing to set a preliminary hearing. The Honorable Peter A. Berger, Judge of the Superior Court of California, County of Contra Costa rescheduled the matter for July 7, 2004. Respondent failed to appear at the July 7, 2004 court date. On that date, Judge Berger reset the matter for July 14, 2004. Respondent failed to show up for the July 14, 2004 date. On that date, Judge Berger issued an Order to Show Cause for July 29, 2004, ordering respondent to show cause as to why he failed to appear on July 14, 2007. On July 29, 2004, respondent appeared and proffered an explanation for his absence. Judge Berger found the explanation inadequate, and fined respondent \$150 to be paid on or before August 27, 2004. The court rescheduled the preliminary hearing for September 3, 2004. Respondent failed to appear on that date. Prior to September 3, 2004, the respondent's client died. Respondent failed to notify the court that his client

died prior to or on September 3, 2004. On that date, the deputy district attorney informed the court that the defendant had died. On September 3, 2004, Judge Berger issued an Order to Show Cause, ordering the respondent to appear on October 20, 2004 and show cause as to why he failed to appear on September 3, 2004. The respondent failed to appear. On October 28, 2004, Judge Berger imposed sanctions against the respondent of \$1,500, to be paid within 15 days. Respondent failed to pay the sanctions in a timely manner.

By failing to attend multiple court hearings, failing to abide by court orders, and failing to pay sanctions, respondent failed to obey a court order, violating Business and Profession Code section 6103. By constructively withdrawing from employment, in a proceeding before a tribunal without its permission, respondent violated Rules of Professional Responsibility, rule 3-700(A)(1). By failing to attend multiple court hearings, failing to inform the court that he would not appear, failing to pay sanctions, and failing to inform the court of his client's death, respondent failed to maintain respect for the court, in violation of Business and Professions Code section 6068(b). By failing to attend multiple court hearings, failing to inform the court that he would not appear, failing to pay sanctions, and failing to inform the court of his client's death, respondent failed to perform with competence, in violation of the Rules of Professional Misconduct, rule 3-110(A)

## II. Other Conditions

### A. Substance Abuse Conditions: Compliance With Lawyer's Assistance Program

Respondent shall comply with all provisions and conditions of his participation plan with the State Bar Lawyer's Assistance Program ("LAP"), and all modifications thereto, until such time as he graduates from LAP or until the expiration of this ALD, whichever is sooner. Within 14 calendar days from the effective date of this ALD, Respondent shall provide the Office of Probation with a copy of the waiver which he has signed with LAP that authorizes the LAP to provide Probation with information regarding his compliance with LAP. Revocation of this written waiver would be a violation of this ALD. In addition, each quarter and before the due date of his final report, Respondent shall request and obtain from LAP written proof of his compliance with LAP, and provide the original of the LAP compliance report to the Office of Probation with his written report. The written LAP compliance report shall be dated not sooner than 10 calendar days prior to the date Respondent submits his required written reports to the Office of Probation.

### B. Sanctions and Restitution

Respondent it to remain suspended and until he pays all outstanding sanctions. and makes full restitution as delineated on the Financial Conditions form attached hereto.

## III. Pending Proceedings

The disclosure date referred to on page 1, paragraph a(7), is March 27, 2007. As of this date, there are no other pending proceedings.

## IV. Costs of Disciplinary Proceedings

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 27, 2007, the estimated prosecution costs in this matter are approximately \$4,770. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which

will be included in a final a 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.

V. State Bar Ethics School

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

VI. Authorities in Support of Discipline

A. The Standards

Standard 2.4(b) [Failure to Perform]: “Culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member or willfully failing 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.”

Standard 2.6 [Offenses Involving Other Specified Sections of the Business and Professions Code]: “Culpability of a member of a violation [of 6068 or of 6103] of the Business and Professions Code shall result in disbarment or suspension 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.”

Standard 2.8 [Offenses Involving Violation of Rule 3-300]: “Culpability of a member of a willful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member’s misconduct and the harm to the client are minimal, which case, the degree of discipline shall be reproof.”

Standard 2.10 [Violation of Any Provision of the Business and Professions Code Not Specified in Any Other Standard]: “Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional conduct not specified in these standards shall result in reproof or suspension according to 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.

B. Case Law

*Demain v. State Bar* (1970) 3 Cal.3d 381, 387: “Whatever the reason for an attorney’s misconduct, [the court’s] of an attorney, the preservation of public confidence in the legal profession, and the maintenance of the highest professional standards for attorneys.”

*Waysman v. State Bar* (1986) 41 Cal.3d 452, 457: The absence of a prior record of discipline over substantial years of practice was considered a “particularly strong mitigating factor.”

*Lavin v. State Bar* (1975) 14 Cal.3d 581: Respondent was suspended for three months and until restitution was made, where in four matters respondent failed to pay out money he collected on behalf of a

client, failed to keep advanced fees in trust, failed to refund unearned and unused advanced fees and costs, failed to communicate and failed to perform services.

*Wells v. State Bar* (1978) 20 Cal.3d 708: An attorney, who had been previously suspended for three months for commingling and misappropriating a client's funds and fraudulent concealing his misconduct, was suspended for one year, stayed, thirty days actual for deceiving his client regarding the status of petitions for writs of habeas corpus allegedly prepared by respondent, willfully and habitually neglected to perform the services for which he had been employed, and intentionally abandoned his client while representing that he was actively pursuing a writ of habeas corpus on his behalf.

*Matter of Klein* (Review Dept. 1990) 3 Cal. State Bar Ct. Rptr. 1: For violation of Business and Professions Code section 6068, respondent was suspended for two months, stayed, with one year probation, restitution, Ethics School and CPRE, for failing to obey a court order to halt implementation of a writ of execution for spousal support against his client's estranged husband, subsequently retained funds in his trust account despite a demand for their return, and ultimately used the funds to pay for legal fees which respondent was later awarded in an arbitration against the client. Mitigation was found for respondent's long period of practice without a prior discipline.

*Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211: Respondent was suspended for one year, stayed, no actual suspension and two years probation, for failing to appear as ordered on behalf of his client at a mandatory settlement conference and, when he did appear at a later conference, intentionally mislead the settlement conference judge regarding the fact that his client had recently died. In mitigation respondent practiced for thirty years without a prior discipline in California, though he was disciplined by a federal court in Wisconsin in an unrelated matter.

*In re Leardo* (1991) 53 Cal.3d 1, 17: Respondent, with no prior discipline, was suspended for five years, stayed, no actual suspension for a conviction in the Virgin Islands, of two counts of possessing a controlled substance with intent to distribute, a crime involving moral turpitude.

*Dixon v. State Bar* (1985) 40 Cal.3d 595: In an attorney disciplinary proceeding, the Supreme Court held that acquiring an interest adverse to clients under terms which were not fair and reasonable without giving clients reasonable opportunity to seek advice of independent counsel on transaction warrants one-year stayed suspension with two years' probation and 60 days' actual suspension.

*Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703: Respondent, with a prior private reproof (19 years prior), received a public reproof for misconduct in a single client matter that involved failing to return promptly to the clients an unearned legal fee and, upon discharge failing to take steps to avoid foreseeable prejudice to the clients, respondent was found culpable of violating rules 3-700(D)(1) and 3-700(A)(2).

*Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498: Even if respondent failed to appear at an immigration court hearing because he simply forgot to record the date of the hearing in his calendar, his failure to appear must be viewed in light of the record as a whole. Even if an attorney does not act intentionally or recklessly, he violates the rule of professional conduct regarding his duty to competently perform legal services if he repeatedly fails to competently perform. Respondent's failure to appear at the

hearing could not be excused for disciplinary purposes because, under record as a whole, his failure was not isolated, but one of many such failures.

*Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907: Respondent was suspended for two years, stayed, given three years probation, with an actual 30 day suspension, after being found culpable in four client matters of nine counts, in violation, in part, of Rules of Professional Conduct, rule 3-700(A)(1), for appearing without clients authority; failing to promptly return unearned fees and client papers; to communicate properly with a client; to intentionally provide competent legal services; to promptly pay out settlement proceeds upon request; to deposit funds received for the benefit of a client in a trust account; and withdrawing from employment without obtaining the required permission of a court and without taking reasonable steps to protect the client's rights.

In the Matter of  
**James P. Swanseen**

Case number(s):  
**06-O-12003; 06-O-13269**

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
Surya Ratnam	\$2,800 + Amount To Be Determined by the Client Security Fund Regarding Respondent's Use and Damage to Mr. Ratnam's 1993 Ford Van and Parking Tickets and Bridge Tolls Accumulated by Respondent.	October 29, 2005
Estate of Kenneth Hillgardner	An Amount, if any, to be Determined by the Client Security Fund, For All Unearned Fees.	February, 2004

- 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>James P. Swanseen</b>	Case number(s): <b>06-O-12003</b> <b>06-O-13269</b> <b>05-C-2624</b> <b>04-C-10513</b> <b>04-C-10238</b>
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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>04/09/07</u> Date	 Respondent's Signature	<u>James P. Swanseen</u> Print Name
<u>04/9/07</u> Date	 Respondent's Counsel Signature	<u>Arthur K. Wachtel</u> Print Name
<u>04/10/07</u> Date	 Deputy Trial Counsel's Signature	<u>Manuel Jimenez</u> Print Name

(Do not write above this line.)

In the Matter of James P. Swanseen	Case number(s): 06-O-12003 06-O-13269 05-C-02624 04-C-10513 04-C-10238
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### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

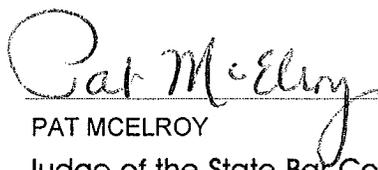
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 4, section D (1)(b) an "x" is inserted in the box indicating that the above -referenced suspension is stayed.
2. On page 5, section E(9) an "x" is inserted in the box since respondent is still undergoing "Prop. 36" conditions.
3. On page 5, section F(3) the conditional rule 9.20 requirement is deleted.
4. On page 9, section II (A), all references to the acronym "ALD" are deleted and in its place the word stipulation is inserted.
5. On page 9, section II (B) "sanctions and restitution"--the sentence that Respondent is to remain suspended and until he pays all outstanding sanctions and makes full restitution is deleted as Respondent has agreed to pay the sanctions and restitution to Ratman (\$2800 in legal fees and \$3800 in repairs costs). However, there will not be an "and until" provision.
6. The amount of damages to the car is \$3800.

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 953(a), California Rules of Court.)**

Date

May 3, 2007



PAT MCELROY

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 San Francisco, on May 3, 2007, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:

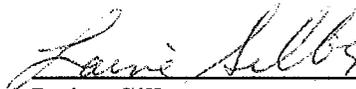
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ARTHUR KENNETH WACHTEL**  
**170 COLUMBUS AVE #100**  
**SAN FRANCISCO, CA 94133 - 5160**

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

**MANUEL JIMENEZ, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 3, 2007**.



**Laine Silber**  
Case Administrator  
State Bar Court