

PUBLIC MATTER

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State Bar Court of California Hearing Department Los Angeles

Counsel For The State Bar Elita Shasty Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-1162 Telephone: (213) 7965-1491 Bar # 225177	Case Number (s) 06-O-12098	(for Court's use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-weight: bold;">JUN 05 2008</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
Counsel For Respondent Jerome Fishkin Fishkin & Slatter LLP 1111 Civic Drive, Suite 215 Walnut Creek, California 94596 Bar # 47798	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: JOSEPH GUY MAIORANO Bar # 113876 A Member of the State Bar of California (Respondent)	Actual Suspension	

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 June 14, 1984.
- (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 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

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- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

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

- (1) ☐ Prior record of discipline [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
 - (b) ☐ Date prior discipline effective
 - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
 - (d) ☐ Degree of prior discipline
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ Lack of Cooperation: Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ No aggravating circumstances are involved.

Additional aggravating circumstances:

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

Actual Suspension

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. Respondent submitted numerous letters from a broad range of the community attesting to his good character.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances are involved.**

Additional mitigating circumstances

Respondent has no prior record of discipline in more than 23 years of practice. (See p. 10)

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 1 Year, 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 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:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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

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- (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 TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOSEPH GUY MAIORANO

CASE NUMBER(S): 06-O-12098

FACTS AND CONCLUSIONS OF LAW.

Respondent Joseph Guy Maiorano ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

1. At all times relevant to the events alleged herein, Steven Watson ("Watson") was an insurance broker who sold insurance policies for various insurance companies, including but not limited to, U.S. Risk Insurance Group, Inc. ("U.S. Risk"). Watson and his partner, Ted Bauer, sold insurance policies under their partnership, Bauer & Watson Insurance Services, Inc. ("Bauer & Watson").

2. In 2000, U.S. Risk alleged that Watson owed U.S. Risk insurance premiums that he had collected on behalf of U.S. Risk but had failed to remit to U.S. Risk. Watson contended that he only owed U.S. Risk approximately \$72,075.63.

3. In 2000, Watson employed Respondent to represent him when U.S. Risk threatened to file a lawsuit.

4. On December 15, 2000, U.S. Risk filed an action in the District Court of Dallas County, Texas, 116th Judicial District, entitled *U.S. Risk Insurance Group, Inc., et al. v. Bauer & Watson Insurance Services, Inc., et al.*, case no. 00-09975A ("U.S. Risk matter").

5. In December 2000, Watson offered to deposit \$72,075.63 in trust pending a resolution of the U.S. Risk matter to demonstrate a good faith effort to resolve the matter and in exchange for various interim concessions from U.S. Risk. In December 2000, Respondent communicated this offer to U.S. Risk. U.S. Risk did not accept the offer at the time it was initially communicated.

6. On December 18, 2000, Watson gave Respondent a check for \$72,075.63 to hold in

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trust pending the resolution of the U.S. Risk matter which Respondent deposited into his client trust account.

7. In December 2000 and January 2001, Respondent withdrew \$68,000 of those funds. Accordingly, on March 1, 2001, Respondent was holding \$4,075.63 in his CTA on behalf of Watson.

8. On March 1, 2001, U.S. Risk told Respondent it would accept Watson's offer of maintaining \$72,000 in trust in exchange for various interim concessions. On or about this date, Respondent signed a written agreement with U.S. Risk wherein he agreed to keep \$72,000 of Watson's funds in Respondent's CTA pending a further order from the court in the U.S. Risk matter ("interim settlement agreement").

9. On March 1, 2001, when Respondent signed the interim settlement agreement, he misrepresented to U.S. Risk that he would "freeze" \$72,000 in his CTA pending a further order from the court in the U.S. Risk matter. This statement was false because Respondent knew that he was only holding \$4,075.63 on behalf of Watson at that time.

10. At the time Respondent signed the interim settlement agreement, Respondent knew that his statement in the interim settlement agreement was false because he did not hold \$72,000 in trust on behalf of Watson.

CONCLUSIONS OF LAW:

12. By misrepresenting to U.S. Risk in the interim settlement agreement that he held \$72,000 of Watson's funds in his CTA when he knew that statement was false, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

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 October 17, 2007, 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.

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The disclosure date referred to, on page one, paragraph A.(7), was May 7, 2008.

DISMISSALS.

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-12098	1	Rules of Professional Conduct, rule 4-100(A)
06-O-12098	2	Business and Professions Code, section 6106
06-O-12098	3	Business and Professions Code, section 6106
06-O-12098	4	Business and Professions Code, section 6106
06-O-12098	5	Business and Professions Code, section 6106
06-O-12098	7	Business and Professions Code, section 6106
06-O-12098	8	Business and Professions Code, section 6106
06-O-12098	9	Business and Professions Code, section 6106
06-O-12098	10	Business and Professions Code, section 6106

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 13, 2008, the costs in this matter are \$4,698.95 . 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.

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."

Recently, the Supreme Court 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.

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Standard 2.3 provides that "[c]ulpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to the court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

MITIGATING CIRCUMSTANCES.

No Prior Discipline.

Respondent has no prior record of discipline and was admitted to the State Bar on June 14, 1984. While the misconduct herein is deemed serious by the State Bar, *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, provides in footnote 13 that Standard 1.2(e)(i) has been applied by the Supreme Court to cases involving serious misconduct.

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**In the Matter of
JOSEPH GUY MAIORANO****Case number(s):
06-O-12098****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.

5/28/08

Date

5/29/08

Date

6/2/08

Date



Respondent's Signature

JOSEPH GUY MAIORANO
Print Name

Respondent's Counsel Signature

JEROME FISHKIN
Print Name

Deputy Trial Counsel's Signature

BITA SHASTY
Print Name

(Do not write above this line.)

In the Matter Of
JOSEPH GUY MAJORANO

Case Number(s):
06-O-12096

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.)

JUNE 3, 2008
Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 June 5, 2008, 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:

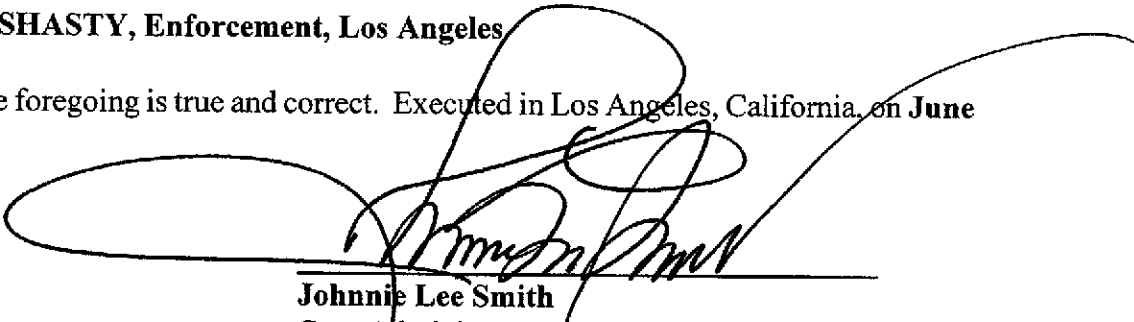
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JEROME FISHKIN
FISHKIN & SLATTER LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596**

- [X] 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 **June 5, 2008**.


Johnnie Lee Smith
Case Administrator
State Bar Court