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~~CONFIDENTIAL~~

State Bar Court of California Hearing Department		
PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES		
Counsel For The State Bar DAVID T. SAUBER Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Bar # 176554 Tel: (213) 765-1252	Case Number (s) 06-O-12137	(for Court's use) LODGED MAY - 6 2008 <i>Hc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES CONFIDENTIAL
ERICA TABACHNICK 900 Wilshire Blvd., Suite 1000 Los Angeles, California 90017 Bar # 94324 Tel: (213) 895-4640	FILED APR - 6 2011 <i>Hc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
In the Matter Of: STUART IRWIN FOLINSKY Bar # 65814 A Member of the State Bar of California (Respondent)	Submitted to: STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 December 18, 1975.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (8) pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment.
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law." -See Attachment.
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.



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

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case 03-O-04599, 03-O-05199, and 04-O-10879
- (b) ☒ Date prior discipline effective July 20, 2004
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: California Rules of Professional Conduct, Rules 3-110(A), 3-700(D)(2), and 4-100(B).
- (d) ☒ Degree of prior discipline Public Reprimand with duties.
- (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below:
Effective January 7, 1998, the State Bar Court imposed upon Respondent a public reprimand, with duties, in State Bar Court Case Number 96-O-00750, for his violation of Rule 3-110(A) of the California Rules of Professional Conduct, and California Business and Professions Code section 6068, subdivision (m).
- (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:

None.

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.

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- (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:

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **STUART IRWIN FOLINSKY**

MEMBER # **65814**

CASE NUMBER(s): **06-O-12137**

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute causes for discipline in these matters.

I. Facts.

1. Respondent Stuart Irwin Folinsky (Respondent) was admitted to the practice of law in the State of California on December 18, 1975, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On May 23, 2005, Ilias Fiakka ("Fiakka") hired Respondent to file an action in the United States District Court to contest the denial of his immigration status. Fiakka signed a Retainer Agreement prepared by Respondent and gave Respondent a check for \$4,000 for advance attorney's fees that Respondent cashed.
3. Fiakka called Respondent's office and left messages with Respondent's staff to have Respondent call him to provide a status report at least once in September 2005, twice in October 2005, and four times in November 2005.
4. Respondent did not respond to Fiakka's messages or otherwise communicate with Fiakka.
5. On November 14, 2005, Respondent notified the State Bar that he moved his office from 3700 Wilshire Boulevard #500, Los Angeles, California 90010 ("Wilshire Office"), to 6255 W. Sunset Boulevard, Suite 915, Los Angeles, California 90028 ("Sunset Office"). Respondent used two telephone numbers at the Wilshire Office. The first telephone number, (213) 381-2900, remained with the law office that continued operating out of the Wilshire Office after Respondent moved. The second telephone number, (213) 386-8540, moved with Respondent to the Sunset Office. On or about the date Respondent moved his office, Respondent made an agreement with the prior office to direct all of Respondent's clients to his new Sunset Office.

6. Respondent did not personally inform Fiakka at any time that Respondent had moved to the Sunset Office.
7. In January 2006, Fiakka called Respondent at the Wilshire Office and left three messages with individuals answering that telephone number to have Respondent call him to provide a status report.
8. Respondent received Fiakka's messages, but he did not respond to those messages or otherwise communicate with Fiakka.
9. On February 6, 2006, Fiakka sent an e-mail to the immigration attorney who referred him to Respondent, Tanya Myers ("Myers"), to request her assistance in contacting Respondent.
10. On February 6 and 17, 2006, Myers spoke with Respondent and informed him that Fiakka requested a status report from Respondent. During the February 6, 2006 conversation, Respondent told Myers that he would pull Fiakka's file and call him.
11. Respondent did not call or otherwise communicate with Fiakka.
12. On March 19, 2006, Fiakka mailed a letter to Respondent, via certified mail with return receipt requested, that informed Respondent of the following: 1) Respondent had not responded to Fiakka's attempts to communicate with him since September 2005; 2) Respondent changed his address without notifying Fiakka; and 3) Fiakka demanded a refund of the \$4,000 within seven days. On March 22, 2006, an individual at Respondent's Sunset Office signed acknowledging receipt of the letter.
13. Respondent received Fiakka's March 19, 2006 letter, but he did not respond to that letter or otherwise communicate with Fiakka at that time or provide him with any refund.
14. Respondent did not file an action in the United States District Court to contest the denial of Fiakka's immigration status or take any other action to contest the denial of Fiakka's immigration status between May 23, 2005, and March 22, 2006.
15. On October 16, 2006, after receiving the State Bar complaint, Respondent located the file and wrote to Fiakka. In this letter, Respondent offered to either refund Fiakka's money or to perform the services for which he had been retained, as well as filing another application for adjustment at no extra charge. Respondent also informed Fiakka that he had checked the "800 Information Line" of the appropriate agency and determined there were no removal proceedings. Respondent then prepared the Request for Declaratory Relief and sent it to Fiakka.
16. On October 19, 2006, Fiakka wrote to Respondent and advised him that he wanted Respondent to continue representing him in his immigration case. Fiakka sent Respondent a check for the additional filing fees. Respondent advised Fiakka that he would file the Request

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for Declaratory Relief for which he was originally retained along with an Application for Adjustment of Status for which Respondent would not charge any additional legal fees.

17. On October 25, 2006, Respondent filed the Request for Declaratory Relief in the United States District Court on behalf of Fiakka.

18. On November 1, 2006, Respondent sent Fiakka the forms he needed in order to file an Application for Adjustment of Status on behalf of Fiakka. As of the date of this stipulation, Respondent continues to represent Fiakka.

II. Conclusions of Law.

Count One

By failing to perform the services for which he was hired by Fiakka, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.

Count Two

By failing to respond to Fiakka's or Myers' requests for a status report from October 2005 through February 2006, and by failing to respond to Fiakka's March 19, 2006 letter, Respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of California Business and Professions Code section 6068, subdivision (m).

PENDING PROCEEDINGS.

The disclosure date referred to, on page two, paragraph A(6), was November 13, 2007.

DISMISSAL

In the interest of the justice, the State Bar requests that Count Three in Case No. 06-O-12137 be dismissed.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on December 14, 2006, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges

relating to cases which are the subject matters of this stipulation.

FEE ARBITRATION

Respondent hereby agrees to write to Fiakka, within sixty (60) days from the date he signs an ADP contract regarding this matter offering to initiate and participate in State Bar fee arbitration upon Fiakka's request regarding the \$4,000 advanced fees that Fiakka paid to Mr. Folinsky in May 2005. However, Respondent is relieved from complying with this provision if Mr. Fiakka provides written notification, a copy of which will be provided to the Office of The Chief Trial Counsel, that he does not want to participate in State Bar fee arbitration regarding the \$4,000 in advanced fees that he paid Mr. Folinsky in May 2005.

Respondent further agrees to abide by any final order in a fee arbitration with Fiakka. Respondent understands and agrees that his failure to write the letter, or to initiate or to participate in fee arbitration upon Fiakka's request, or to abide by any final order, shall constitute a violation of his disciplinary resolution and/or his ADP participation and be cause for further State Bar action including his unsuccessful termination from the Alternative Discipline Program. Respondent shall provide such proof of compliance with this condition as this court or the State Bar's Office of Probation may request.

Respondent waives the expiration of any time to resolve this dispute by fee arbitration.

(Check with state file line.)

In the Matter of STUART IRWIN FOLINSKY Member #85814	Case number(s): 06-O-12137
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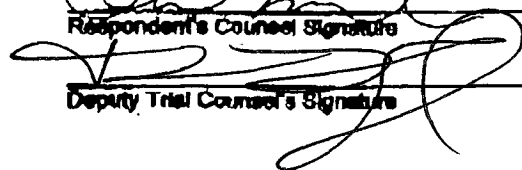
SIGNATURE OF THE PARTIES

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 Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

11-14-07 Date	 Respondent's Signature	STUART I. FOLINSKY Print Name
11/14/07 Date	 Respondent's Counsel Signature	ERICA TABACHNICK Print Name
11-15-07 Date	 Deputy Trial Counsel's Signature	DAVID T. SAUBER Print Name

(Stipulation form approved by SBC Executive Committee 9/15/02. Revised 12/18/2004; 12/15/2006.)

Signature page (Program)

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In the Matter Of STUART IRWIN FOLINSKY Member #65814	Case Number(s): 06-O-12137
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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 stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

May 6, 2008
Date

Donald F. No
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 29, 2011, I deposited a true copy of the following document(s):

**DECISION AND ORDER SEALING CERTAIN DOCUMENTS;
STIPULATION RE FACTS AND CONCLUSIONS OF LAW;
FIRST ADDENDUM STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

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:

**STUART IRWIN FOLINSKY
16530 VENTURA BLVD STE 210
ENCINO, CA 91436**

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 29, 2011.



Tammy Cleaver
Case Administrator
State Bar Court