

ORIGINAL

**State Bar Court of California
Hearing Department**

PUBLIC MATTER

Counsel For The State Bar MELANIE J. LAWRENCE Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015-2299 Bar #230102 Tel #: (213) 765-1066	Case Number (s) 06-C-14001	(for Court's use) FILED JUN 02 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
DAVID C. BURKENROAD 11514 Vienna Way Los Angeles, California 90066-2113 Bar # 110320 Tel #: (310) 572-1585	Submitted to: Trial Judge	
In the Matter Of: DAVID C. BURKENROAD Bar # 110320 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <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 12, 1983.
- (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 (10) 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: **In 3 billing cycles following the effective date of the Supreme Court Order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

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

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case **04-0-14954**
- (b) ☒ Date prior discipline effective **02-16-05**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **3-110(A), 3-700(D)(2)**
- (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.
- (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:

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

D. Discipline:

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of one 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 30 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.
- (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.

(Do not write above this line.)

- (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: DAVID BURKENROAD

CASE NUMBER(S): 06-O-14001

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

The parties waive any variance between the Notice of Disciplinary Charges filed on December 4, 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 the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

A. FACTS AND CONCLUSIONS OF LAW.

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. Prior to March 24, 2006, Joseph DeFelice ("DeFelice"), employed Respondent to represent his minor son (also referred to herein as "the minor") in Los Angeles County Superior Court, Juvenile Court case number MJ12135 ("the DeFelice matter").
2. On March 24, 2006, Respondent appeared in Los Angeles County Superior Court, in the DeFelice matter, a juvenile case. Thereafter, Respondent sent DeFelice a letter in which he informed him that it may be advisable to find a local attorney to represent his son. Respondent also informed DeFelice that if he did not find another attorney to represent his son, he would continue to do so, but requested that he be paid certain fees and costs. Respondent enclosed a Substitution of Attorney form with the letter.
3. DeFelice did not find another attorney to represent his son, and did not return the Substitution of Attorney form to Respondent. Respondent did not make a motion to withdraw from the DeFelice matter, and remained attorney of record.

4. On April 7, 2006, the court issued a minute order in the DeFelice matter, ordering Respondent's personal appearance in Department 285 on May 5, 2006 and August 4, 2006. Respondent received the order.

5. On May 5, 2006, Respondent did not appear for the hearing in the DeFelice matter. On that same date, the court called Respondent and sent him a letter, reminding him that he was still attorney of record, and ordering him to appear on August 4, 2006, at 9:00 a.m. Respondent received the letter.

6. On August 4, 2006, Respondent did not appear for the hearing held in the DeFelice matter. The court then ordered Respondent to appear on October 13, 2006, at 8:30 a.m.

7. Thereafter, on August 25, 2006, the court appointed Denise McLaughlin to represent the minor in place of Respondent, in the DeFelice matter.

Conclusions of Law:

By failing to appear for the May 5, 2006 and August 4, 2006, hearings, without permission of the court, and when he knew DeFelice had not hired another attorney to represent his son, Respondent effectively withdrew from employment in a proceeding without the court's permission and failed to take reasonable steps, upon termination of employment, to avoid reasonably foreseeable prejudice to his client, in wilful violation of rule 3-700(A) of the Rules of Professional Conduct.

By failing to appear for the May 5, 2006, and August 4, 2006, hearings after the court ordered him to do so, Respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear, in wilful violation of Business and Professions Code section 6103.

B. AUTHORITIES SUPPORTING DISCIPLINE.

In the Matter of Respondent Y (1998) 3 Cal. State Bar Ct. Rptr. 862, the attorney was privately reprovved for violations of Business and Professions Code sections 6068(o) and 6103. The attorney was ordered by the Superior Court to pay sanctions for frivolous actions and then failed to do so. He also failed to timely report the sanctions to the State Bar. In mitigation, he had no prior record of discipline.

In *Chefsky v. State Bar* (1984) 36 Cal.3d 116, the court ordered *Chefsky* suspended for three years, stayed, with thirty days actual suspension for multiple, serious, violations including willfully violating a court order and improperly withdrawing from employment in multiple client matters. *Chefsky* had been in practice for twenty years with no prior discipline and the court found his behavior, aberrant.

In *Gary v. State Bar* (1988) 44 Cal.3d 820, the attorney was culpable in two matters involving the same client of wilfully failing to perform services competently and failing to abide by his oaths and duties as an attorney, when he repeatedly failed to appear for court appearances, causing a matter to be continued several times unnecessarily, and failing to timely file a claim in a personal injury matter. *Gary* had been disciplined on three prior occasions and because of that, was ordered disbarred.

Respondent has one prior record of discipline for which he was privately reproved. In that matter he stipulated to violating Rule 3-110(A) but the facts are not dissimilar to this case. There, he was employed by a client and then simply told the client he was not available and thereafter, did not appear on the client's behalf. The present matter involved only one client, and did not involve the kind of extensive, multiple violations as in *Chefsky*. But, Respondent's misconduct significantly harmed the administration of justice because his failure to appear as ordered on two occasions, caused unnecessary delay in the client's matter and necessitated the court appointing the client new counsel.

C. 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 \$4,920. 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.

(Do not write above this line.)

In the Matter of
DAVID C. BURKENROAD
Member #: 110320

Case number(s):
06-O-14001

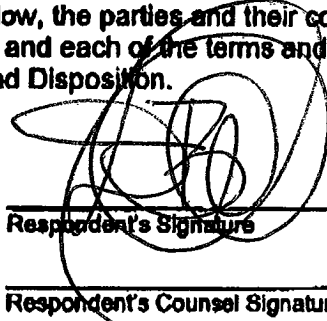
SIGNATURE OF THE PARTIES

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.

5/13/08
Date

Date

Date



Respondent's Signature

Respondent's Counsel Signature

Deputy Trial Counsel's Signature

DAVID C. BURKENROAD
Print Name

Print Name

MELANIE J. LAWRENCE
Print Name

(Do not write above this line.)

In the Matter of
DAVID C. BURKENROAD
Member #: 110320

Case number(s):

06-O-14001

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.

Date

Respondent's Signature

DAVID C. BURKENROAD

Print Name

Date

Respondent's Counsel Signature

Print Name

Date

Deputy Trial Counsel's Signature

MELANIE J. LAWRENCE

Print Name

(Do not write above this line.)

In the Matter Of DAVID C. BURKENROAD Member #: 110320	Case Number(s): 06-O-14001
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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.

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.)

6-2-08
Date


Judge of the State Bar Court
RICHARD A. HONN

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 2, 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:

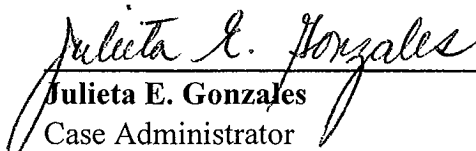
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID BURKENROAD ESQ
LAW OFC DAVID BURKENROAD
11514 VIENNA WAY
LOS ANGELES, CA 90066 - 2113**

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

Melanie J. Lawrence, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 2, 2008**.



Julieta E. Gonzales
Case Administrator
State Bar Court