

State Bar Court of California
Hearing Department
Los Angeles
ALTERNATIVE DISCIPLINE PROGRAM

<p>Counsel For The State Bar</p> <p>Charles A. Murray 1149 S. Hill Street Los Angeles, CA 90015-229 (213) 765-1236</p> <p>Bar # 146069</p>	<p>Case Number (s)</p> <p>07-O-13741; 08-O-11985 06-O-14246 07-O-12402</p> <p style="text-align: center;">FILED APR - 6 2011 <i>Y/c</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	<p>(for Court's use)</p> <p style="text-align: center;">LODGED DEC - 2 2009 <i>Y/c</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Erica Tabachnick 900 Wilshire Blvd., Suite 1000 Los Angeles, CA 90017 (213) 895-4640</p> <p>Bar # 94324</p>	<p>Submitted to: Program Judge FIRST ADDENDUM STIPULATION RE FACTS AND CONCLUSIONS OF LAW [Prior Stipulation Case no. 06-O-12137]</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: STUART IRWIN FOLINSKY</p> <p>Bar # 65814</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 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, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline 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 **14** pages, excluding 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) 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)] — 2
- (a) ☒ State Bar Court case # of prior case 03-0-04599; 03-0-05199; 04-0-10879
- (b) ☒ Date prior discipline effective July 20, 2004
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: RPC 3-110(A); 3-700(D)(2); 4-100(B)
- (d) ☒ Degree of prior discipline Public Reprimand
- (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below:
Case no. 96-0-00750; Eff. January 7, 1998; violation RPC 3-110(A) and
SBA section 6068(m) — Public Reprimand
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
See page 13.
- (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:

ATTACHMENT TO
FIRST ADDENDUM ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **STUART IRWIN FOLINSKY** MEMBER # **65814**

CASE NUMBER(s): **07-O-12402 and 06-O-14246; 07-O-13741 and 08-O-11985**

PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A. (6), was August 20, 2009.

STIPULATION AS TO 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, or that he has otherwise committed acts of misconduct warranting discipline, as follows:

Facts for Case No. 07-O-12402

1. On August 24, 2001, Hyun Sook Chung ("Chung") employed Respondent to represent her in an *in absentia* removal proceeding, case number A 75 627 591 ("the Chung Removal Proceeding"), before the United States Executive Office for Immigration Review ("EOIR"). She had just received a letter from the former Immigration & Naturalization Service ("INS") ordering her to report for removal to Korea. Ms. Chung had been represented by several other attorneys before she retained Respondent. Respondent agreed to represent Chung on an hourly fee basis.

2. Chung, a South Korean national, had entered the United States ("U.S.") on a non-immigrant visa ("Visa") and then stayed in the U.S. longer than the Visa allowed and was arrested as an "overstay." Her goal was to become a legal, permanent U.S. resident. The EOIR scheduled a hearing on the Chung Removal Proceeding for December 18, 2003.

3. In January 2002 Respondent was successful in appealing an *in abstentia* order for removal, having Chung's matter remanded to the Immigration Court, and getting the case reopened.

4. On May 24, 2002, a hearing was scheduled for August 5, 2002. At the August 5, 2002 hearing, the matter was continued to January 9, 2003. On January 9, 2003, the matter was sent for her final hearing on the pending asylum claim for December 18, 2003.

///

///

///

5. On December 9, 2003, Chung married a U.S. citizen, John Timothy Hughes ("Hughes"). Chung's marriage to Hughes changed the basis for her request for permanent residence. Due to this change of circumstances, on December 16, 2003 Respondent filed a motion to continue in the December 18, 2003 Chung Removal Proceeding to late January 2004.

6. Respondent, Chung and Mr. Hughes appeared at the court on December 18, 2003 at the appointed hearing time. However, the courtroom was dark. They were informed that a new hearing notice would be forthcoming.

7. On December 19, 2003, the EOIR granted the motion to continue and re-scheduled the hearing for February 2, 2004. The Court served Notice of the February 2, 2004 hearing by mail on Respondent at his address of record on December 19, 2003. Respondent claims to have not received this Notice and to have not checked with the Court to determine the new hearing date.

8. Chung was not notified of the February 2, 2004 hearing. Neither Respondent nor Chung appeared at the February 2, 2004 hearing. The February 2, 2004 hearing was held *in absentia* and Chung was ordered removed to South Korea. On February 9, 2004 Respondent received the new *in absentia* order entered on February 2, 2004. Respondent did not immediately attend to this development and on February 12, 2004 his brother had a stroke, went into a coma, and died in less than a month. Respondent thereafter went into depression and continued to fail to properly attend to his client matters.

9. From the time of the unexplained "dark" courtroom on December 18, 2003 through February 2007 Chung and Mr. Hughes contacted Respondent regularly – approximately once a month by telephone and to his office once every three to four months - to inquire about the status of Chung's case. The only thing Respondent did regarding Chung's case during this time was to check for a hearing date using the automated information line of the Immigration Court at 800-898-7180 and Ms. Chung's alien number. Since the Court had already issued a removal order, no date was scheduled. He reported to Chung that there was no scheduled hearing date. Because of his failure to attend to his client's file he was unaware of the already issued *in absentia* removal order.

10. Between December 2003 and February 2007, Chung telephoned Respondent at least once a month. Chung also went to Respondent's office every three to four months to inquire as to the date and time of the new hearing in the Chung Removal Proceeding. Respondent assured Chung not to worry and that the hearing would be rescheduled soon.

11. From January 2004 until March 2007, other than an occasional call to the Court's information line, Respondent performed no services of value to Chung.

12. In March 2007 it came to Respondent's attention that the February 2004 hearing had taken place and an *in abstenia* order of removal had been issued against Chung.

13. On March 23, 2007, Respondent filed a Motion with the EOIR captioned Motion to Reopen-Failure to Receive Notice; Lozada Ineffective Assistance of Counsel ("Motion to Reopen") in the Chung Removal Proceeding. In the Motion to Reopen Respondent cited his failure to inform Chung of the February 2, 2004 hearing as one of the grounds for reopening the removal proceeding. The EOIR granted the Motion to Reopen on May 16, 2007. Respondent gave telephonic notice to Mr. Hughes. A few days later, he received a substitution of attorney replacing him as Chung's counsel.

Conclusions of Law for Case No. 07-O-12402

14. By failing to appear at Chung's removal hearing and failing to take steps to reopen her case for nearly 3 years, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

15. By not informing Chung of the February 2, 2004 hearing and the removal order issued when the February 2, 2004 hearing was held *in absentia*, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

Facts for Case No. 06-O-14246

16. On March 8, 2006, Nigel Ian Baker ("Baker"), an Australian national, received a notice to appear on April 4, 2006 ("Notice to Appear") before the United States Executive Office for Immigration Review ("EOIR") for a removal proceeding, case number A 77-255-357 ("the Baker Removal Proceeding").

17. On April 3, 2006, Baker employed Respondent to represent him in the Baker Removal Proceeding. On April 4, 2006, Respondent accepted \$2,080 from Baker as advanced fees for his services. Respondent agreed to represent Baker on an hourly fee basis.

18. On April 4, 2006, Respondent accompanied Baker to court, but the Notice to Appear had not been filed with the EOIR. Respondent attempted to file a Form EOIR-28, "Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court" ("EOIR-28"). Successfully filing the EOIR-28 would have allowed Respondent to receive future communications from the EOIR on Baker's behalf. The EOIR-28 was rejected by the EOIR because the Notice to Appear had not been filed. Thereafter, Respondent agreed to monitor the EOIR automated case information telephone service so Respondent would know if a hearing on the Baker Removal Proceeding had been rescheduled. Baker returned to Australia to await information from Respondent regarding the Baker Removal Proceeding.

///

///

///

19. On April 3, 2006, the EOIR issued a Notice of Hearing in Removal Proceedings ("Notice of Hearing") scheduling Baker for a hearing before the EOIR on April 26, 2006. Respondent did not inform Baker of the April 26, 2006 hearing and neither respondent nor Baker appeared at the April 26, 2006 hearing. On April 26, 2006, the EOIR issued a decision in the Removal Proceeding *in absentia*; Baker was ordered removed to Australia.

20. On May 5, 2006, Baker sent an e-mail to Respondent requesting an update on the status of the Removal Proceeding. Respondent received the e-mail. Respondent never responded to the May 5, 2006 E-mail.

21. On May 12, 2006, Baker sent an e-mail to Respondent attempting to verify Respondent's receipt of the May 5, 2006 E-mail. Respondent received the e-mail. Respondent never responded to the May 12, 2006 E-mail.

22. On June 10, 2006, Baker sent an e-mail to Respondent requesting: an immediate response to the May 5, 2006 and May 12, 2006 e-mails, a statement itemizing expenditures of the \$2080 deposited for Respondent's services and an explanation for Respondent's failure to perform the services Baker contracted for in the Fee Agreement. Respondent received the e-mail. Respondent never responded to the June 10, 2006 e-mail.

23. Respondent did not provide an accounting to Baker detailing expenditures of the \$2,080 received from Baker as advanced fees for his services as requested by Baker on June 10, 2006.

24. On January 18, 2007, Respondent e-mailed Baker informing him that Respondent planned to file the Motion to Reopen the Baker Removal Proceeding at his own expense on January 19, 2007. He attached a copy of the motion. Respondent also reestablished contact with Baker.

25. On January 19, 2007, Respondent filed a motion captioned, "Motion to Reopen—Lozada Ineffective Assistance of Counsel" ("Motion to Reopen") in Baker's Removal Proceeding. In the Motion to Reopen Respondent cited his failure to inform Baker of the April 26, 2006 hearing as one of the grounds for reopening the removal proceeding. The Motion to Reopen was granted by the EOIR.

26. At about this time Respondent and Baker agreed that Respondent would continue to represent him.

27. On January 26, 2007, Respondent advised Baker that the hearing was set for February 7, 2007, and informed him that he would discuss the fact that Baker was in Australia.

28. On January 29, 2007, Respondent emailed Baker about a change in Immigrant Visa processing for immediate relatives.

29. On February 7, 2007, Respondent appeared in Court and the Immigration Judge said he requested a new form I-407 be filed. The judge re-set the hearing for May 17, 2007. Respondent told Baker about the procedures for obtaining a form I-407 which Baker did and sent Respondent a copy.

30. On May 17, 2007, Respondent appeared in Court and the removal case was reopened, the prior order vacated, and proceedings were "terminated without prejudice." By email, Respondent further informed and advised Baker regarding his matter.

31. Ultimately, Respondent performed the services for which he was retained.

Conclusions of Law for Case No. 06-O-14246

32. By not informing Baker of the April 2006 hearing in the Baker Removal Proceeding and by not informing Baker of the result of the Baker Removal Proceeding, Respondent failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code, section 6068(m).

33. By failing to respond to respondents e-mails for approximately eight months, Respondent failed to respond to Braun's reasonable status inquiries in wilful violation of Business and Professions Code, section 6068(m).

34. By failing give an accounting of the advanced fees, Respondent failed to render appropriate accounts to a client in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

Facts for Case No. 07-O-13741

35. On December 31, 1991, Cresenciano Leandro Cruz ("Cruz") entered the United States without inspection.

36. On June 12, 1996, Cruz married Mercedes Guillermina Miranda, a United States Citizen.

37. On April 17, 2001, Cruz employed Respondent to assist him in obtaining permanent resident status in the United States ("U.S."). Respondent did not have Cruz sign a written fee agreement. Respondent told Cruz that he would charge Cruz \$1,500 plus costs to obtain U.S. permanent resident status for Cruz. Cruz's employer, J. & V. Mason paid Respondent \$750 in attorney fees on April 17, 2001 and an additional \$750 in attorney fees on September 7, 2001, on behalf of Cruz.

///

///

38. Respondent advised Cruz that Cruz's application for permanent residence should be filed by April 30, 2001 to take advantage of section 245(i) of the Immigration and Nationality Act ("245(i)") before its expiration. Under 245(i), Cruz could become a U.S. permanent resident without having to first leave the country.

39. Respondent sent Cruz a letter informing him that he sent Cruz's application for permanent residency to the INS. The 245(i) legislation under which Cruz's application for permanent residency was filed had an expiration date of April 30, 2001. Consequently, there was a huge increase in filing which overwhelmed the former INS. In the last two weeks of April 2001, the former INS had a drop box in the Attorney Filing Room. Former INS would then process a case at a later date and treat it as a timely filing. This is what happened with Mr. Cruz's application. The application along with Respondent's trust check number 653, dated April 19, 2001, was not cashed by the former INS until June 13, 2001, but it was considered timely filed.

40. On November 26, 2001, Respondent sent Cruz a letter informing him of an INS appointment for fingerprinting.

41. On December 27, 2001, Cruz completed his fingerprinting with the INS.

42. On February 20, 2002, the INS sent Cruz a letter with an appointment for an interview at the INS regarding Cruz's Application for Permanent Residence.

43. On May 20, 2002, Respondent and Cruz appeared at the INS interview. The INS requested further documentation from Cruz, including his birth certificate, proof of termination of his wife's previous marriage, a clearance letter from the Los Angeles Superior Court and tax returns from the years 1999 and 2000.

44. Within a few days after the May 20, 2002 INS interview, Cruz gave Respondent all of the documents requested by the INS on May 20, 2002.

45. On December 9, 2003, the former INS sent Respondent a letter setting a second interview on December 19, 2003. Respondent attended the second interview with Cruz on that date.

46. On December 19, 2003, the INS delivered to Respondent and Cruz a letter requesting a translation of the death certificate of Cruz's wife's first husband from Spanish to English. The letter also requested a new Affidavit of Support and warned that failure to provide the requested documents would result in denial of the application. Respondent prepared the Affidavit of Support and translation of the death certificate and timely delivered both to the INS.

///
///
///
///

47. Sometime after December 19, 2003 the INS sent a notice to the Respondent and Cruz informing them that Cruz needed to be fingerprinted again on February 26, 2004 ("Fingerprint Notice"), because the validity of the previous fingerprints had expired. Cruz never received the Fingerprint Notice. Respondent received the Fingerprint Notice on February 26, 2004.

48. On February 12, 2004, Respondent's brother had a stroke, went into a coma and died within a month. Respondent thereafter went into depression and continued to fail to properly attend to his client matters.

49. On March 4, 2004, the INS sent a letter entitled "Decision on Application for Status as Permanent Resident" to Cruz and Respondent. The letter informed them that Cruz's application for permanent status had been denied because he failed to appear for fingerprinting on February 26, 2004.

50. On March 19, 2004, Respondent sent Cruz a letter and a copy of the Fingerprint Notice. Respondent's letter stated the Fingerprint Notice was an "open" notice and was mailed to Respondent on February 26, 2004. Respondent advised Cruz to drop off the confirmation of the fingerprinting and he would take care of getting the case reopened and his application for permanent residence approved.

51. On March 22, 2004, Cruz got fingerprinted and gave Respondent the confirmation of fingerprinting.

52. After sending the March 19, 2004 letter, Respondent performed no other services of value for Cruz, including taking any steps to get Cruz's case reopened and approved. As a result of Respondent's failure to take any action on Cruz's behalf, Cruz's application for Permanent Residence remained denied.

53. Respondent did not inform Cruz of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Cruz.

54. Respondent never obtained Permanent Residence for Cruz. Though Respondent performed some services for Cruz, he withdrew from representation without completing the services for which he was retained and leaving Cruz to have to start over if he wanted to obtain his permanent residence. Respondent must return the \$1,500 fees to Cruz.

Conclusions of Law for Case No. 07-O-13741

55. By failing to take any action on Cruz's behalf after March 19, 2004, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

///

///

56. By failing to inform Cruz of his intention to withdraw from employment, Respondent failed, upon termination, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients, in willful violation of Rule of Professional Conduct, rule 3-700(A)(2).

Facts for Case No. 08-O-11985

57. On November 6, 2006, Carol Welsman ("Welsman") employed Respondent to assist her in obtaining permanent resident status in the United States ("Permanent Residence"). Respondent and Welsman did not enter into a written fee agreement.

58. At all times relevant hereto, Welsman was in the United States on an O-1 Work Visa.

59. On March 6, 2007, Welsman called Respondent and left a message inquiring about the status of her application for Permanent Residence. Respondent received the message. Respondent never responded to Welsman's inquiry.

60. On March 9, 2007, Welsman sent Respondent an e-mail inquiring about the status of her application for Permanent Residence. Respondent received the e-mail. Respondent never responded to the e-mail inquiry.

61. On March 22, 2007, Welsman's husband called Respondent. Respondent did not answer and Respondent's voicemail mailbox was full, so Welsman's husband could not leave a message.

62. On March 22, 2007, Welsman's husband, on behalf of Welsman, sent Respondent a letter inquiring about the status of Welsman's application for Permanent Residence. Respondent received the letter. Respondent never responded to the letter.

63. In August 2007, Welsman called and spoke to Respondent. Respondent had not yet filed Welsman's application for Permanent Residence and apologized to her for the delay in filing the application. Respondent also assured Welsman that he would proceed immediately with filing her application.

64. On September 25, 2007, Respondent sent Welsman an e-mail in which he again apologized for the delay in filing her application. Respondent attached forms to the e-mail for Welsman to print and sign. Respondent also requested tax returns and other documentation from Welsman and her husband. Welsman returned all requested documentation in a timely manner. This was the last communication from Respondent to Welsman.

///

///

///

///

65. Respondent never filed the application for Permanent Residence on Welsman's behalf, nor did he perform any legal services of value for Welsman.

66. On June 24, 2008, Welsman's O-1 Visa expired. Because she had not received her Permanent Residence, she had to pay \$3,695 in fees to apply for another O-1 Visa.

67. On November 13, 2006, Welsman paid Respondent \$1,190 in advanced costs for her application for Permanent Residence.

68. Respondent never filed Welsman's application for Permanent Residence. Therefore, Respondent did not use the \$1,190 he held on Welsman's behalf to pay the costs of her application for Permanent Residence.

69. On July 7, 2008, Welsman terminated Respondent's employment and requested return of the \$1,190 that Respondent held on her behalf.

70. To date, Respondent has failed to refund any portion of the \$1,190 he held on Welsman's behalf to Welsman.

71. On February 27, 2008, Welsman sent a letter to Respondent requesting her file. Respondent never responded to the letter and never returned Welsman's file.

72. On July 7, 2008, Welsman again sent a letter to Respondent in which she requested her file. Respondent never responded to the letter and never returned Welsman's file.

Conclusions of Law for Case No. 08-O-11985

73. By failing to perform any legal services of value for Welsman, including failing to obtain Welsman's Permanent Residence as agreed, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

74. By failing to refund to Welsman the \$1,190 held on her behalf after she discharged him as her attorney, Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive.

75. By not releasing the client file to Welsman upon her request, Respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all client papers and property in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE:

Case No. 96-O-00750: Effective January 7, 1998. Violation: Rules of Professional Conduct, rule 3-110(A), and Business & Professions Code, section 6068(m). Discipline: Public Reproval with duties; two (2) years probation with conditions; Ethics School and MPRE within one (1) year, and costs.

Case No. 03-O-4599: Effective July 20, 2004. Violation: Rules of Professional Conduct, rule 3-110(A), 3-700(D)(2) and 4-100(B). Discipline: Public reproval with duties; one (1) year probation with conditions; Ethics School within one (1) year, and costs.

HARM:

Respondent's misconduct caused significant harm to Chung, causing an removal order to south Korea to issue and stand for three years without informing Chung, during which time Chung should have been processed as a permanent resident.

Respondent's misconduct caused significant harm to Baker, causing an order of removal to Australia to issue stand for almost a year, not informing Baker it had been issued, and not accounting to Baker for fees taken.

RESTITUTION

Respondent shall pay the principal sum of \$1,500 to Cresenciano Cruz, with interest at the rate of 10% per annum from April 17, 2001.

Respondent shall pay the principal sum of \$1,190 to Carol Welsman, with interest at the rate of 10% per annum from November 13, 2006.

///

(Do not write above this line.)

In the Matter of
STUART IRWIN FOLINSKY

Case number(s):
07-O-13741; 08-O-11985

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.

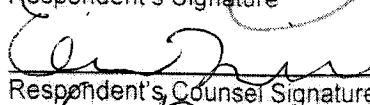
If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

8/27/09
Date

8/27/09
Date

8/28/09
Date


Respondent's Signature


Respondent's Counsel Signature


Deputy Trial Counsel's Signature

STUART IRWIN FOLINSKY
Print Name

ERICA TABACHNICK
Print Name

CHARLES A. MURRAY
Print Name

(Do not write above this line.)

In the Matter of STUART IRWIN FOLINSKY	Case number(s): 07-O-13741; 08-O-11985
-------------------------------------------	-------------------------------------------

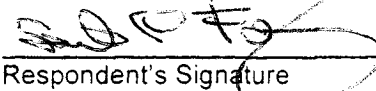
SIGNATURE OF THE PARTIES

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, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>8/27/09</u> Date	 Respondent's Signature	STUART IRWIN FOLINSKY_____ Print Name
_____ Date	_____ Respondent's Counsel Signature	ERICA TABACHNICK_____ Print Name
_____ Date	_____ Deputy Trial Counsel's Signature	CHARLES A. MURRAY_____ Print Name

(Do not write above this line.)

In the Matter Of
STUART IRWIN FOLINSKY

Case Number(s):
07-O-13741; 08-O-11985

ORDER

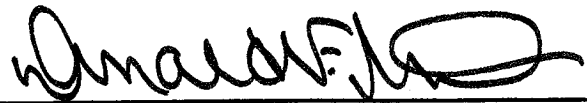
Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- ☐ 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(a), Rules of Procedure.)

12/2/09

Date



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