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**State Bar Court of California
Hearing Department
Los Angeles**

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Diane J. Meyers 1149 S. Hill St. Los Angeles, CA 90015 (213) 765-1496</p> <p>Bar # 146643</p>	<p>Case Number (s) 06-O-14519</p>	<p>(for Court's use)</p> <p align="center">FILED</p> <p align="center">NOV 21 2008</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Yana K. Gershfeld 3900 Braewood Ct., Suite 101 Tarzana, CA 91356 (818) 345-0045</p> <p>Bar # 201998</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: Yana K. Gershfeld</p> <p>Bar # 201998</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 **June 15, 1999**.
- (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 **8** 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):
- costs added to membership fee for calendar year following effective date of discipline.
 - 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 or a separate attachment entitled "Prior Discipline."
- (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

Respondent has no prior record of discipline. Around late 2004, Respondent's father, who lived in New York, became very ill, which required Respondent to travel out of the state. Shortly thereafter, Respondent had two consecutive deaths in her family, which required more out-of-state travel. In 2005, Respondent became pregnant with her second child. During the last trimester of the pregnancy, Respondent experienced medical complications. After delivering her daughter in March of 2006,

Respondent was on maternity leave for most of 2006. Due to these personal problems, Respondent overlooked the fact that she had not effectively updated her membership records address and that she had not paid her membership fees for 2006. Respondent also provided references supporting her good character from people who were aware of her misconduct.

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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **one year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.
- (4) 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.

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- (5) 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.
- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason:
- (8) 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.
- (9) 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 within one year. **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) **Other Conditions:**
- Respondent may complete the MRPE, as set forth in paragraph F.(1) above, after execution of this stipulation and prior to the effective date of the discipline imposed in this matter.**

Attachment language (if any):

Respondent admits that the following facts are true and that she is culpable of the following violations of The State Bar Act:

FACTS:

1. In May 2004, Respondent moved her office from 8383 Wilshire Blvd., Suite 339, Beverly Hills, CA 90211-2403 to 6400 Quebec Dr., First Fl., Los Angeles, CA 90068 (the "Los Angeles address"). Respondent notified the United States Postal Service, and her clients, opposing counsel and the courts in pending matters, of her change of address.
2. On October 31, 2005, Membership Billing of the State Bar of California ("membership billing") mailed written notice to Respondent regarding membership fee scaling for 2006 at the membership records address. The notice was returned to membership billing undeliverable as addressed.
3. On or about November 15, 2005, membership billing mailed a 2006 membership fee statement to Respondent at the membership records address. Respondent's membership fee was due on February 1, 2006. The fee statement was returned to membership billing undeliverable as addressed.
4. On February 22 and April 14, 2006, membership billing mailed fee statements to Respondent at the membership records address. The fee statements were returned to membership billing undeliverable as addressed.
5. On May 26, 2006, membership billing mailed a final delinquent notice regarding Respondent's unpaid membership fee to Respondent at the membership records address. The notice was returned to membership billing undeliverable as addressed.
6. On August 22, 2006, the California Supreme Court suspended Respondent by order number S145875 due to Respondent's failure to pay her 2006 membership fees. The order was effective September 18, 2006.
7. On August 25, 2006, membership services mailed written notice of the suspension order to Respondent at the membership records address. The notice was returned to membership billing undeliverable as addressed.
8. On September 29, 2006, Respondent faxed her opposition to a motion to compel discovery (the "opposition") on behalf of her client, Robert Moskovith, to opposing counsel, Shab David Kerendian ("Kerendian"), in a matter entitled, *Executive Financial Home Loan Corporation, et al. v. Robert S. Moskovith*, Los Angeles County Superior Court case number BC336001 (the "Moskovith case").
9. On October 10, 2006, Respondent filed the opposition with the court in the Moskovith case.
10. On October 13, 2006, Respondent appeared in court in the Moskovith case during a hearing on the motion to compel and argued the matter for Moskovith.
11. On October 18, 2006, Respondent faxed her reply relating to a motion to compel discovery in the Moskovith case to Kerendian (the "reply").

12. On October 19, 2006, Respondent filed the reply with the court in the Moskovith case.

13. On October 20, 2006, Respondent appeared in court in the Moskovith case during a hearing on the motion to compel. Plaintiff's counsel, Jerald Olf, informed the court of Respondent's suspension by the State Bar of California. The hearing was delayed to address Respondent's status with the State Bar. Respondent contacted membership services by telephone and was informed of her suspended status. Upon returning to court on October 20, 2006, the court imposed a \$300 sanction against Respondent and in favor of plaintiff's counsel for the delay caused by Respondent.

14. Respondent maintains that she sent a change of address form to the State Bar in May of 2004, but she did not follow up to make sure that the address change was effectively made. On October 23, 2006, Respondent effectively updated her address with membership records, paid her membership fees and penalties, and was returned to active status with the State Bar.

LEGAL CONCLUSIONS:

1. By not effectively notifying membership records of her change of address until October 23, 2006, Respondent failed to comply with the requirements of section 6002.1, which requires a member of the State Bar to maintain on the official membership records, the member's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes or purposes of the agency charged with attorney discipline, and to notify membership records of any change in such address or telephone number within 30 days of any change, in wilful violation of Business and Professions Code section 6068(j).

2. By faxing the opposition and the reply to Kerendian, by filing the opposition and reply with the court, and by appearing in court in the Moskovith case while suspended, Respondent violated Business and Professions Code sections 6125 and 6126. By violating Business and Professions Code sections 6125 and 6126, Respondent failed to support the laws of this state, in wilful violation of Business and Professions Code section 6068(a).

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In the Matter Of
Yana K. Gershfeld

Case Number(s):
06-O-14519

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.)**

11-20-08

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 November 21, 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:

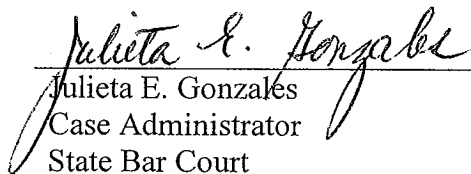
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

YANA K GERSHFELD ATTORNEY AT LAW
LAW OFC YANA K GERSHFELD
3900 BRAEWOOD CT STE 101
TARZANA, CA 91356

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

Diane J. Meyers, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 21, 2008.



Julieta E. Gonzales
Case Administrator
State Bar Court