



(Do not write above this line.)

**State Bar Court of California  
Hearing Department  
San Francisco**

Counsel For The State Bar  <b>Robin Brune</b> Deputy Trial Counsel 180 Howard Street San Francisco, CA 95018  Bar # <b>149481</b>	Case Number (s) <b>06-O-14928</b>	(for Court's use)  <div style="text-align: center;"> <b>PUBLIC MATTER</b> </div> <div style="text-align: center;"> <b>FILED</b> </div> <div style="text-align: center;"> <b>MAY 14 2008</b> </div> <div style="text-align: center;"> <b>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</b> </div>
Counsel For Respondent  <b>Fishkin &amp; Slatter LLP</b>  <b>Lindsay Slatter</b> 1111 Civic Drive, Suite 215 Walnut Creek, CA 94596  Bar # <b>72692</b>	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: <b>Harold Jaffe</b>  Bar # <b>57397</b>  A Member of the State Bar of California (Respondent)		

**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 **January 2, 1974**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Do not write above this line.)

- (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. **See attachment.**
- (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 attachment.**
- (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:

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.

- (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:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       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:**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:        Harold Jaffe

CASE NUMBER(S):        06-O-14928 ET AL.

**FACTS AND CONCLUSIONS OF LAW**

Respondent admits that the following facts are true and that he/she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Facts

On February 2, 2000, Thomas and Kelly Fratar (hereinafter, "Fratar") hired respondent to represent them in several legal matters. One legal matter involved an easement of their home at 72 Live Oak, Oakland, California, and a contract dispute with a contractor, Dworman, ("the *Dworman* matter") regarding the pavement of their driveway. According to the Fratars, Dworman, who purchased property near the Fratars' property, agreed to remove and replace the Fratar's driveway, in exchange for using the Fratars' driveway as a staging area for his equipment, while he constructed the neighboring parcel. After completing the construction, Dworman sold the adjacent parcel to Rogers.

The Fratars' claimed that Dworman changed the grading of the property without their knowledge or consent, and reneged on the agreement to pave the driveway. While they estimated that an original driveway would have cost approximately \$3,000.00 to build, due to the change in grading, they ultimately had to pay \$35,000.00 for a driveway. In addition, there was a dispute about Dworman landscaping an easement that belonged to the Fratars.

The Fratars also hired respondent to bring an action for defective construction of their home, against D.C. Construction, as well as for two additional legal matters.

With respect to the *Dworman* matter, the Fratars signed an attorney-client fee contract on February 2, 2000, agreeing to pay respondent \$225.00 per hour for his services. On August 7, 2000, the Fratars' title insurance company paid respondent \$5,635.88 due to the easement issue. In addition, on October 19, 2000, the Fratars paid respondent \$2,433 on their account, and on December 11, 2000, they paid an additional \$2,570.75.

On March 2, 2000, respondent brought suit on behalf of the Fratars, related to the *Dworman* matter, entitled *Thomas Fratar, Kelly Fratar, vs. Todd Dworman, Jeffrey Armstrong, et. al*, case no. 823346-6, filed in Superior Court, County of Alameda, Northern Division. Armstrong owned an interest in the Dworman property.

On August 10, 2000, after losing several demurrers and motions to strike, Dworman and Armstrong, through counsel, attorney Harold Smith ("Smith") and attorney Jeffrey Cluett

("Cluett") answered the complaint.

Smith and/or Cluett, on behalf of the defendants, sent respondent letters dated April 11, 2001, May 3, 2001, August 7, 2001, and August 13, 2001, requesting various responses regarding the dismissal of certain claims as discussed at the case management conference; objections to the supplemental witness disclosure for failure to participate in the initial witness disclosure, and request that defendant Armstrong be dropped from the complaint. Smith sent these letters to respondent via United States mail, postage pre-paid, to respondent at 3521 Grand Avenue, Oakland, California 94160.

Respondent received the letters and was aware of their contents.

Respondent did not reply to Smith and/or Cluett or otherwise respond to the issues raised by Smith's letters, regarding dismissal of certain causes of action, experts, and defendant Armstrong.

On July 12, 2001, respondent conveyed to the Fratars that Dworman/Armstrong had made a settlement offer of \$3,780 to resolve the case. On July 25, 2001, trial was set for September 7, 2001. On July 30, 2001, the Fratars advised respondent that they were rejecting the settlement offer. On August 9, 2001, they sent respondent \$12,500.00 as a deposit for the trial.

On August 17, 2001, respondent's secretary contacted Smith and advised that respondent was not available to take the depositions of defendant's experts as scheduled on August 22, 2001. Smith responded by advising that they would make their experts available during the week of September 4, 2001. By exchange of letters, the parties discussed a trial continuance. Smith declined to stipulate to a continuance of the trial.

On August 30, 2001, respondent filed an ex-parte request to continue the trial set for September 7, 2001. The Court set a limited briefing schedule for the request, and a hearing on the motion at September 5, 2001 at nine a.m. In his request, respondent advised the court that his sister had passed away on August 16, 2001.

On September 4, 2001, the defense filed an opposition to the Motion to Continue. In their opposition, Smith advised that respondent had failed to provide proper disclosure of the experts, did not depose the defendants or any other witnesses, and failed to proceed with the matter in a timely fashion.

On September 6, 2001, respondent filed a request for dismissal, without prejudice, of the case, and the case was dismissed. Respondent did not obtain the Fratars' consent to dismiss their cause of action. He refunded to them the \$12,500.00 in fees, in September, 2001. The Fratars thought that the suit was merely delayed or continued. They did not discover the dismissal until January, 2004, after they terminated respondent's services in another matter, involving D.C. Construction (regarding the defective construction of their home) and hired successor counsel for that litigation. Successor counsel advised them of the dismissal of the *Dworman* litigation.

#### Conclusions of Law

1. By failing to disclose his experts in a timely fashion; by failing to conduct any

discovery; by generally being unable to go forward with trial as scheduled on September 7, 2001, and by dismissing his client's cause of action without their consent, respondent failed to perform, in wilful violation of Rules of Professional Conduct, Rule 3-110(A).

2. By failing to advise the Fratars of his dismissal of the *Dworman* matter, respondent failed to keep his clients, the Fratars, reasonably informed of significant developments in a matter in which respondent agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

### PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A(7), was April 15, 2008.

### AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct call for reproof or suspension for failing to perform, depending upon the extent and degree of harm to the client (Standard 2.4(b)).

Case law supports a range from reproof to actual suspension for one client abandonments. In the Matter of *Aguiliz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32; *Harris v. State Bar* (1990) 51 Cal. 3d.1082; *Wren v. State Bar* (1983) 34 Cal. 3d. 81; *Vaughn v. State Bar of California* (1973) 9 Cal. 3d. 698; *In Re Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr, 844.

In *Aguiliz*, the attorney was representing the clients in a Department of Social Services action to revoke the license for their residential care home. He obtained one continuance due to the fact that his son was murdered. Thereafter, the hearing was again postponed, the attorney left on some travels, and the court found his further inaction on the case was tantamount to a withdrawal. There was more than four years passage of time between the complaint to the Bar and the notice being filed. The Court imposed a stayed suspension. The Court found that "Respondent's misconduct occurred in the shadow of his tragic loss" *Aguiliz*, supra, at p. 44.

In *Harris*, the attorney neglected a personal injury matter for over four years, and the client died during the pendency of the action. Harris received ninety days of actual suspension.

In *Wren*, the attorney had 22 years with no prior discipline. He nonetheless misrepresented to the client that his matter was proceeding when in fact the case had never been filed. He received two years stayed suspension and forty-five days of actual suspension.

In *Vaughn*, the court held that a 4 year delay between the acts giving rise to a disciplinary proceeding and the issuance of the notice to show cause therein was a factor to be considered in the disposition. The court gave a public reproof to an attorney who had given false information intended to mislead the trial court and had failed to adequately prepare an associate who took his place in certain litigation.

In *Regan*, the attorney pursued an appeal without the client's authority (as opposed to



dismissing the case without the client's authority) and received seventy five days of actual suspension. He had twenty-four years of discipline free practice.

### **AGGRAVATING CIRCUMSTANCES**

Standard 1.2(b)(iii) concealment  
Standard 1.2(b)(iv) significant harm

### **PRIOR DISCIPLINE**

N/A

### **FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES**

Respondent concealed his misconduct from the Fratars, who did not discover it until January, 2004. They value the dispute at approximately \$35,000.00, which is the cost of replacing their driveway, and due to respondent's concealment, they did not litigate this dispute.

### **MITIGATING CIRCUMSTANCES**

Standard 1.2(e)(iv) extreme emotional difficulties  
Standard 1.2(e)(vi) good character

### **FACTS SUPPORTING MITIGATING CIRCUMSTANCES**

Respondent suffered the loss of his sister to cancer on August 16, 2001, about three weeks before he dismissed this case. Prior to her death, he was providing a lot of her care. The emotional toll on respondent, coupled with the added responsibilities, contributed to his inability to perform in this matter. Respondent presented 7 character reference letters from former clients, professional colleagues, and the current President of the Board of Supervisors for the City and County of San Francisco. Respondent also demonstrated pro bono work. He has assisted, for eight years, and is currently assisting, the land use committee of the Telegraph Hill Dwellers in San Francisco.

### **ADDITIONAL MITIGATING CIRCUMSTANCES**

Though the misconduct is serious, respondent has had no prior discipline since his admission to the practice of law in 1974.

### **STATE BAR ETHICS SCHOOL**

Because respondent has agreed to attend State Bar Ethics School as part of this

stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 16, 2008, the costs in this matter are \$2,097.50. 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 Harold Jaffe	Case number(s): 06-O-14928
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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 Fact, Conclusions of Law and Disposition.

4-28-2008  
Date

Harold Jaffe  
Respondent's Signature

Harold Jaffe  
Print Name

4-28-2008  
Date

Lindsay K. Slatter  
Respondent's Counsel Signature

Lindsay Slatter  
Print Name

5/2/08  
Date

Robin B. Brune  
Deputy Trial Counsel's Signature

Robin Brune  
Print Name

(Do not write above this line.)

In the Matter Of <b>Harold Jaffe</b>	Case Number(s): <b>06-O-14928</b>
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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 14, 2008  
Date

Pat McElroy  
Judge of the State Bar Court

**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 San Francisco, on May 14, 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 San Francisco, California, addressed as follows:

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

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

**ROBIN BRUNE, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **May 14, 2008**.



**Laretta Cramer**  
Case Administrator  
State Bar Court