

**ORIGINAL**

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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Hugh G. Radigan Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 213-765-1206 Bar # 94251	Case Number(s): 07-O-11287	For Court use only <div style="text-align: center;"> FILED MAR 16 2011 <i>Y/C</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER </div>
Counsel For Respondent Diane L. Karpman 301 North Canon Drive, Suite 303 Beverly Hills, California 90210 310-887-3900 Bar # 64266	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: John Robert Fuchs Bar # 82032 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 November 29, 1978.
- (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 12 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 5.130, Rules of Procedure.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: two billing cycles following the effective date of the Supreme Court discipline order.. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are 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 95-O-10315 and 97-O-16526
 - (b) ☒ Date prior discipline effective September 21, 2001
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions Code section 6068(c)
 - (d) ☒ Degree of prior discipline one year stayed suspension and two years probation
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.
- Case No. 02-O-15454; effective date June 3, 2006; Rules of Professional Conduct rule 4-100(B)(1) and 3-310(C)(2); six month actual suspension, two years stayed suspension and three years probation.
- (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. Respondent has displayed candor and cooperation with the State Bar subsequent to the filing of the Notice of Disciplinary Charges.
- (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. Respondent's conduct in submitting the subject exparte application to the Court without notice to his opposing counsel was the result of his mistaken belief that such conduct was permissible pursuant to district court local rules that arguably had no application to the United States Bankruptcy Court, whose procedures are uniquely governed and controlled by their own separate and distinct local rules of court.
- (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 two 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 sixty 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:

(Do not write above this line.)

- (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 the 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:
 - ☐ Substance Abuse Conditions ☐ Law Office Management Conditions
 - ☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(Effective January 1, 2011)

Actual Suspension

- (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 5.162(A) & (E), 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.
- (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:**

(Do not write above this line.)

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: John Robert Fuchs

CASE NUMBER(S): 07-O-11287

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.

Case No. 07-O-11287 (Complainant: Judge Geraldine Mund)

FACTS:

1. In April 1998, Debtor Kaveh Lahijani filed chapter 7 in the U.S. Bankruptcy Court Central District of California Case No. SV98-15561-GM (the "Lahijani matter"). Howard Croswhite ("Croswhite") was scheduled as a creditor. The Lahijani matter was closed in 1999 as a "no asset" case.
2. The Lahijani matter was reopened in 2002 and the Notice of No Assets was withdrawn in March 2003. Thereafter, a claims bar date was set for March 18, 2004.
3. On January 15, 2004, Croswhite filed Claim No. 2 for \$856,986.43, and later amended the amount to \$594,944.24, with Claim No. 2 now denominated as Claim No. 9.
4. In 2006, Croswhite was represented by Respondent in the Lahijani matter before the Honorable Geraldine Mund ("Judge Mund".)
5. On January 16, 2007, Judge Mund filed a Preliminary Memorandum Opinion after Evidentiary Hearing on Motion for Summary Adjudication of Claim Number 9 ("preliminary memorandum"). In her preliminary memorandum, Judge Mund discussed at length Croswhite's lack of credibility and statements issued in contradiction with declarations which Croswhite had signed and filed under penalty of perjury. In addition, Judge Mund raised the question that Respondent "had to be aware of Mr. Croswhite's perjured testimony", and by so doing, Respondent "ha[s] breached [his] ethical obligations by allowing [Croswhite] to so testify. . ."
6. On February 23, 2007, Respondent sought to have Judge Mund withdraw her comments regarding Croswhite's lack of credibility and the question whether Respondent knew beforehand of his

client's "perjured testimony", by causing to be personally delivered to Judge Mund's Law Clerk, Bruce Baron ("Mr. Baron"), a letter specifically addressed to Judge Mund, without serving a copy upon opposing counsel and other involved parties and without their knowledge.

7. On February 23, 2007, Respondent also caused to be delivered to Mr. Baron a motion titled *Ex Parte Application by Creditor Howard Croswhite, as Trustee of the Mary F. Long Family Trust, and by Counsel Gail S. Gilfillan and John R. Fuchs, Without Notice to Opposing Parties or Counsel, for Order Withdrawing in Its Entirety the Court's Preliminary Memorandum of Opinion re: Claim #9 Entered on January 16, 2007, and Re-Issuing the Preliminary Opinion Without the Improper Language and Findings Regarding Alleged Findings of Perjury and Subornation of Perjury; and Memorandum of Points and Authorities in Support Thereof* ("Respondent's ex parte application".) The caption of Respondent's ex parte application also includes the following: "(Hearing Requested for Croswhite and Counsel but Without the Presence of Other Parties or Counsel, if the Court Feels that Oral Argument on These Issues is Necessary)".

8. Subsequently, Judge Mund set an OSC disclosing Respondent's February 23, 2007 letter and ex parte application in the Lahijani matter to all involved parties.

9. On March 22, 2007, Judge Mund issued an order referring Respondent to the State Bar to investigate if there was a violation of the ex parte prohibition on communication.

CONCLUSIONS OF LAW:

10. By improperly communicating with and arguing to, directly or indirectly, a judge upon the merits of a contested matter pending before such judge, without having given proper notice to his opposing counsel, Respondent was grossly negligent in construing a United States District Court, Central District of California local rule as permitting such conduct and in so doing, willfully violated Rules of Professional Conduct, rule 5-300(B).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 8, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.7(b) provides for disbarment unless the most compelling mitigating circumstances predominate where a member is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline.

Standard 1.7(a) provides that the degree of discipline to be imposed herein shall be greater than that imposed on the member within his prior discipline unless the prior was remote in time and the offense minimal in severity.

Standard 2.10 provides for reproof or suspension for culpability for a violation of the Rules of Professional Conduct not otherwise specified.

The Standards should be followed whenever possible. *In re Silverton* (2005) 36 Cal. 4th 81, 92. In imposing discipline, the court should consider the appropriate discipline in light of the standards, but in so doing the court may consider any ground that may form a basis for an exception to application of the standards. *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980. Inasmuch as the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. *Bates v. State Bar* (1990) 51 Cal. 3rd 1056, 1061.

The disposition herein allows for a deviation from the strict application of the standards since a suspension with actual time in excess of the Respondent's last actual discipline would constitute too harsh a result and would be punitive in nature.

Standard 2.10 is the controlling standard in this matter due to Respondent's mistaken good faith construction of a United States District Court, Central District of California local rule, as controlling and applicable to the situation then confronting Respondent. Rather than deferring to the applicable and controlling local Bankruptcy Rules, rule 9075-1 with respect to *ex parte* overtures and the requirement for notice to adversaries as a necessary concomitant, Respondent misconstrued Central District of California local rule 7-19 as allowing for the *ex parte* to proceed without notice to opposing counsel. Respondent's good faith mistake in this regard is further evidenced by the fact that the cover letter submitted together with the *ex parte* application expressly states that the application is being submitted without being filed and without being served on opposing counsel and parties. As such, there exists no calculated effort attributable to the Respondent to deceive the Court as to his purpose and intent in pursuing the matter as he did. Further, no harm was visited upon his client or any of the other parties to the underlying litigation associated with this misconduct.

In consideration of the facts and circumstances surrounding Respondent's misconduct, and the aggravating and mitigating circumstances present, the parties submit that the intent and goals of the Standards are met in this matter with the imposition of a sixty day actual suspension, one year stayed suspension and two year probation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 8, 2011, the prosecution costs in this matter are approximately \$4,920.00. 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:
John Robert Fuchs

Case number(s):
07-O-11287

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, Conclusions of Law, and Disposition.

Date	<u>3/11/11</u>	<u></u>	John R. Fuchs
		Respondent's Signature	Print Name
Date	<u>3/14/11</u>	<u></u>	Diane Karpman, Esq.
		Respondent's Counsel Signature	Print Name
Date	<u>March 14 '11</u>	<u></u>	Hugh G. Radigan
		Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: John Robert Fuchs	Case Number(s): 07-O-11287
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ACTUAL SUSPENSION 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 5.58(E) & (F), 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.)**

03-15-11
Date


Judge of the State Bar Court

RICHARD A. PLATEL

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 March 16, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

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:

**DIANE LYNNE KARPMAN
KARPMAN & ASSOCIATES
301 N CANON DR STE 303
BEVERLY HILLS, CA 90210 - 4724**

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 16, 2011.



Tammy Cleaver
Case Administrator
State Bar Court