

State Bar Court of California
Hearing Department
San Francisco

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Counsel For The State Bar

Wonder J. Liang
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Case Number (s)

07-O-11533 [07-O-13682]

(for Court's use)

PUBLIC MATTER

FILED

NOV 18 2008

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

Bar # **184357**

In Pro Per Respondent

Daniel E. Kritz
2831 Telegraph Avenue
Oakland, California 94609
(510) 375-5074

Submitted to: **Settlement Judge**

Bar # **148714**

In the Matter Of:

DANIEL E. KRITZ

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

PUBLIC REPROVAL

☐ PREVIOUS STIPULATION REJECTED

Bar # **148714**

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 **December 4, 1990**.
- (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."
- (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 (public reproof)
 - ☐ case ineligible for costs (private reproof)
 - ☒ costs to be paid in equal amounts for the following membership years: **three (3) billing cycles following the effective date of the Supreme Court order herein.**
(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
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☐ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☒ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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. **Respondent harmed 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. **Respondent has no prior record of discipline in the approximate sixteen years of practice before the current acts of misconduct.**
- (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. **Respondent was involved in a custody dispute involving his two-year old son that resulted in his son moving to New York with respondent's former spouse.**
- (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) ☐ **Private reproof (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☐ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☒ **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **two (2) years**.
- (2) ☒ During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent

must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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) ☒ 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 of the effective date of the reprobation.
- ☐ No MPRE recommended. Reason: .
- (11) ☒ The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

In the Matter of

Case number(s):

DANIEL E. KRITZ
SBN 148714

07-O-11553, ET AL.

A Member of the State Bar

Law Office Management Conditions

- a. ☒ Within **30** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than h ours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DANIEL E. KRITZ, SBN 148714

CASE NUMBER(S): 07-O-11553, ET AL.

FACTS AND CONCLUSIONS OF LAW.

Facts: Case No. 07-O-11533:

1. Respondent represented Juan Gabriel Reyes (“Reyes”) in *People v. Juan Gabriel Reyes*, Superior Court of California, County of Alameda, case no. 144380A (“the Alameda County case”). Respondent’s representation of Reyes terminated in or about January 2003 when Reyes entered a guilty plea and was sentenced in the Alameda County case.
2. Subsequently, Reyes was represented by attorney Ramon Magana (“Magana”) in another felony criminal matter, *People v. Juan Gabriel Reyes*, Superior Court of California, County of Stanislaus, case no. 1095338 (“the Stanislaus County case”). In order to effectively represent Reyes in relation to a “three strikes” enhancement in the Stanislaus County case, Magana needed a copy of Reyes’ client file as maintained by respondent in the Alameda County case.
3. On or about August 2, 2006, both Magana and Reyes wrote to respondent and requested respondent to send Reyes’ client file in the Alameda County case to Magana. Respondent received both letters shortly after on or about August 2, 2006. Respondent did not forward Reyes’ client file in the Alameda County case as requested in the August 2, 2006, letters.
4. On or about August 23, 2006, Magana sent another letter to respondent requesting respondent to send Reyes’ file in the Alameda County case to Magana. Respondent received this letter shortly after on or about August 23, 2006. Respondent did not forward Reyes’ file in the Alameda County case as requested in the August 23, 2006, letter.
5. On or about September 27, 2006, Reyes sent another letter to respondent requesting respondent to send his file in the Alameda County case to Magana. Respondent received this letter shortly after on or about September 27, 2006. Respondent did not forward Reyes’ file in the Alameda County case as requested in the September 27, 2006, letter.

6. On or about October 30, 2006, a State Bar employee wrote respondent and requested that he make Reyes' client file in the Alameda County case available to Magana. Respondent received this letter shortly after on or about October 30, 2006.

7. On or about November 22, 2006, respondent unsuccessfully attempted to send Reyes' client file in the Alameda County case to Magana. Magana did not receive the file.

8. On or about May 14, 2007, a State Bar investigator wrote respondent regarding his failure to forward Reyes' client file in the Alameda County case to Magana. Respondent received this letter shortly after on or about May 14, 2007.

9. On or about May 19, 2007, Magana received Reyes' client file in the Alameda County case from respondent.

Conclusions of Law: Case No.: 07-O-11553:

By delaying from shortly after August 2, 2006, until at least on or about November 22, 2006, to send Reyes' client file in the Alameda County case to Magana, respondent failed to release promptly, upon termination of employment, at the request of the client, all the client papers and property, in violation of rule 3-700(D)(1) of the Rules of Professional Conduct.

Facts: Case No. 07-O-13682: Count One:

10. On or about December 12, 2005, respondent accepted a court appointment to represent Jacquylne Matlock ("Matlock") in a felony criminal matter, *People v. Jacquylne Matlock*, Superior Court of California, County of Alameda, case no. 513417 ("*People v. Matlock*").

11. Thereafter, without good cause, respondent failed to appear at multiple court hearings in *People v. Matlock*, including hearings scheduled for the following dates: (1) January 9, 2006; (2) January 30, 2006; (3) February 21, 2006; (4) March 7, 2006; and (5) March 21, 2006. Respondent had notice of each of these hearings and was otherwise capable of appearing at each.

12. During the period of his appointment, respondent failed to take any action to represent Matlock's interests in relation to *People v. Matlock*. Respondent was relieved as Matlock's counsel on or about April 24, 2006.

Conclusions of Law: Case No. 07-O-13682: Count One:

By failing to appear at five court hearings of which he had notice and the ability to

appear, and by otherwise failing to take any action to represent Matlock's interests in relation to *People v. Matlock* during the period of his appointment, respondent intentionally, recklessly and repeatedly failed to perform competent legal services, in violation of rule 3-110(A) of the Rules of Professional Conduct.

Facts: Case No. 07-O-13682: Count Two:

13. On or about September 22, 2005, respondent accepted a court appointment to represent Jason Robinson ("Robinson") in a felony criminal matter, *People v. Jason Robinson*, Superior Court of California, County of Alameda, case no. 114947A ("*People v. Robinson*").

14. Thereafter, without good cause, respondent failed to appear at multiple court hearings in *People v. Robinson*, including hearings scheduled for the following dates: (1) April 3, 2006; and (2) April 6, 2006. Respondent had notice of each of these hearings and was otherwise capable of appearing at each.

15. During the period of his appointment, respondent failed to take any significant action to represent Robinson's interests in relation to *People v. Robinson*. Respondent was relieved as Robinson's counsel on or about April 10, 2006.

Conclusions of Law: Case No. 07-O-13682: Count Two:

By failing to appear at at least two court hearings of which he had notice and the ability to appear, and by otherwise failing to take any significant action to represent Robinson's interests in relation to *People v. Robinson* during the period of his appointment, respondent intentionally, recklessly and repeatedly failed to perform competent legal services in violation of rule 3-110(A) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was October 1, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of October 1, 2008, the costs in this matter are \$2,296.00. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

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.

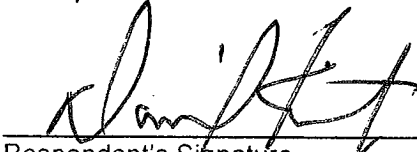
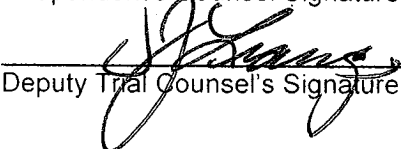
Respondent admits that the above facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

(Do not write above this line.)

| | |
|---|---|
| In the Matter of DANIEL E. KRITZ SBN 148714 | Case number(s): 07-O-11553, et al. |
|---|---|

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.

| | | |
|---------------------------------|---|--------------------------------------|
| <u>October 27, 2008</u> Date |  Respondent's Signature | <u>Daniel E. Kritz</u> Print Name |
| <u>10/27/08</u> Date | <u>Respondent's Counsel Signature</u> | <u>n/a</u> Print Name |
| <u>10/27/08</u> Date |  Deputy Trial Counsel's Signature | <u>Wonder J. Liang</u> Print Name |

(Do not write above this line.)

| | |
|---|--|
| In the Matter Of DANIEL E. KRITZ SBN 148714 | Case Number(s): 07-O-11533, et al. |
|---|--|

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department are vacated.

On page 2, paragraph A. (8) Payment of Disciplinary Costs—Delete “three (3) billing cycles following the effective date of the Supreme Court order herein” and replace it with “2010, 2011 and 2012.” Respondent will be required to pay costs in three equal installments for the years 2010, 2011 and 2012. Stating the specific years is preferred.

On page 6 of the caption, delete “07-O-11553” and replace it with “07-O-11533”.

On page 7 of the caption, delete “07-O-11553” and replace it with “07-O-11533”.

On page 8, under Conclusions of Law, delete “07-O-11553” and replace it with “07-O-11533”.

On page 11 of the caption, delete “07-O-11553” and replace it with “07-O-11533”.

(Do not write above this line.)

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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

November 18, 2008

Date


Lucy Armendariz
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 November 18, 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:

DANIEL E. KRITZ
LAW OFC DANIEL KRITZ
2831 TELEGRAPH AVE
OAKLAND, CA 94609

- ☐ by certified mail, No. _____, with return receipt requested, through the United States Postal Service at _____, California, addressed as follows:

- ☐ by overnight mail at _____, California, addressed as follows:

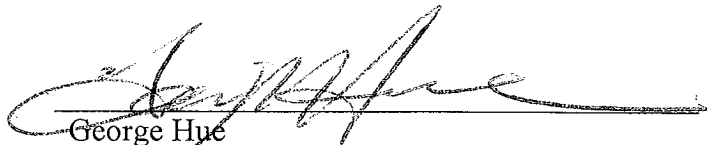
- ☐ by fax transmission, at fax number _____. No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Wonder Liang, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 18, 2008.


George Hue
Case Administrator
State Bar Court