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



<p>Counsel For The State Bar</p> <p>Larry DeSha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1336</p> <p>Bar # 117910</p>	<p>Case Number (s)</p> <p>07-O-12123-RAP</p> <p align="center">PUBLIC MATTER</p>	<p>(for Court's use)</p> <p align="center">FILED</p> <p align="center">DEC 07 2010 <i>MC</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Errol I. Horwitz 5550 Topanga Canyon Blvd.; Ste. 200 Woodland Hills, CA 91367 (818) 347-5268</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>Bar # 86098</p> <p>In the Matter Of:</p> <p>ERROL I. HORWITZ</p> <p>Bar # 86098</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted May 31, 1979.
- (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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - 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 02-O-13628-RMT
 - (b) Date prior discipline effective March 23, 2004
 - (c) Rules of Professional Conduct/ State Bar Act violations: 3-110(A)
 - (d) Degree of prior discipline Public Reproval
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
State Bar Court case no. 00-O-14413-PAB
Date prior discipline effective November 14, 2001
Rules of Professional Conduct violation: Rule 3-110(A)
Degree of prior discipline: Private Reproval
- (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 Stipulation Attachment, page 8.
- (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 Stipulation Attachment, page 8.

- (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. See Stipulation Attachment, page 9.
- (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 \$ 2,500.00 on April 27, 2007 in restitution to Isaac Rozillio without the threat or force of disciplinary, civil or criminal proceedings. See Stipulation Attachment, page 8.
- (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. See Stipulation Attachment, page 9.

- (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 provided pro bono legal services during the years 2005 through 2007 for a client in an immigration case in the U.S. Court of Appeals for the Ninth Circuit, which was appealed to the U.S. Supreme Court as its case no. 05-552 (Thomas v. Gonzalez). The U.S. Supreme Court remanded with instructions which significantly expanded the rights of members of the same family seeking political asylum in the United States.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one (1) 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 (2) 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 thirty (30) 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:

- (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 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.

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(10) 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 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 321(a)(1) & (c), 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: **ERROL I. HORWITZ**
CASE NO.: **07-O-12123-RAP**

WAIVER OF VARIANCE:

The parties waive any variance between the Notice of Disciplinary Charges filed on June 17, 2010 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

FACTS:

1. On November 21, 2003, spouses Lucy Alchalel ("Alchalel") and Isaac Rozillio ("Rozillio") employed Respondent to file petitions to change their immigration status from temporary aliens to permanent residents. They signed a written fee agreement calling for a fixed fee of \$7,500.00, to be paid by \$2,500.00 immediately, \$2,500.00 upon filing their I-526 petitions (Immigrant Petition by Alien Entrepreneur), and \$2,500.00 upon approval of their petitions by the U.S. Immigration & Citizenship Services. Rozillio paid Respondent the first \$2,500.00 on November 21, 2003.
2. Respondent never completed or filed the I-526 petition for either client.
3. There was no contact between Respondent and Alchalel and Rozillio for more than two years. On January 3, 2006, Rozillio sent Respondent an e-mail requesting to meet at Respondent's office for a status report. On January 4, 2006, Respondent sent an e-mail reply stating that he would be available for such a meeting after January 19, 2006. Respondent said nothing about the status of the case, nor did he initiate any work as a result of the e-mail from Rozillio.
4. Rozillio did not request a time for a meeting, and there was no further communication between Respondent and Alchalel and Rozillio for more than four months.
5. On May 25, 2006, Rozillio sent Respondent an e-mail requesting a status report. Respondent sent an immediate reply by e-mail, promising to "follow up for an update" and report back to Rozillio. However, Rozillio did not hear back from Respondent and did not inquire further.
6. On February 10, 2007, Alchalel sent Respondent an e-mail requesting a status report, and pointing out that she and Rozillio had heard nothing about their cases since hiring Respondent more than three years earlier. On February 13, 2007, Respondent sent a reply by e-mail, but stated only that, "I will be sending you more information." Respondent did not send more information.

7. On April 13, 2007, Rozillio sent Respondent an e-mail requesting copies of all documents filed on his behalf. Respondent sent a reply by e-mail on April 17, 2007, stating that he would contact Alchalel and Rozillio "when I return."
8. On April 23, 2007, Respondent made an appointment with Alchalel and Rozillio for a meeting in Respondent's office on April 25, 2007.
9. On April 25, 2007, Respondent met with Alchalel and Rozillio and confessed that he had done nothing on their cases and had misled them by failing to tell them the truth whenever they requested information. Respondent delivered their files to them that day.
10. On April 27, 2007, Respondent paid a full refund of \$2,500.00 to Rozillio.

CONCLUSIONS OF LAW:

11. By failing to complete and file the I-526 petitions for Alchalel and Rozillio for more than three and one-half years, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.
12. By not informing Alchalel and Rozillio that he had not completed or filed their I-526 petitions, Respondent failed to keep his clients reasonably informed of significant developments in a matter for which he had agreed to provide legal services, in willful violation of section 6068(m) of the Business and Professions Code.

DISMISSALS:

The State Bar respectfully requests the Court to dismiss the following alleged violation in the interests of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
07-O-12123-RAP	Three	Section 6106

AGGRAVATING CIRCUMSTANCES:

1. Misconduct Surrounded by Bad Faith, Dishonesty, and Concealment

Respondent repeatedly failed to provide his clients with a true status report. For three years, he concealed that he had done no work on their case. He misled his clients both by silence when he had a duty to make an honest report.

2. Significant Harm to Clients

Respondent's failure to act delayed his clients' path to U.S. citizenship by three years and five months. After hiring him on November 21, 2003, they had to start all over on April 25, 2007.

MITIGATING CIRCUMSTANCES:

1. Candor/Cooperation

Respondent has stipulated to all of the material facts alleged in the Notice of Disciplinary Charges, as set forth above. After misleading the clients for more than three years, Respondent made a full confession to his clients for his misconduct.

2. Family Problems

During the period of Respondent's failure to perform legal services for Alchalel and Rozillio, Respondent's wife was suffering from ulcerative colitis, which kept her bedridden for much of every day. Respondent had to provide her with personal hygiene assistance and feeding, which required about half of his time on most working days. His wife's condition improved significantly after corrective surgery after the period of his misconduct.

SUPPORTING AUTHORITY:

Standard 1.7(a) requires that the second imposition of discipline be greater than the first, except for circumstances not present here.

Standard 1.7(b) requires that a third imposition of discipline shall result in disbarment unless the most compelling circumstances clearly predominate.

Standard 1.4(c)(ii) requires that an actual suspension shall be for not less than 30 days.

Standard 2.4(b) requires that failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or 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.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, paragraph A.(7), was December 6, 2010.

COSTS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 3, 2010, 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.

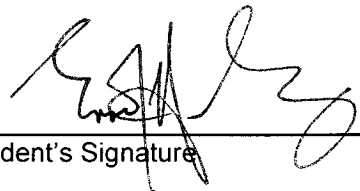
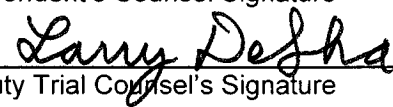
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In the Matter of ERROL I. HORWITZ	Case number(s): 07-O-12123-RAP
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SIGNATURE OF THE PARTIES

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.

December <u>3</u> , 2010 Date	 Respondent's Signature	Errol I. Horwitz Print Name
_____ Date	_____ Respondent's Counsel Signature	_____ Print Name
December <u>6</u> , 2010 Date	 Deputy Trial Counsel's Signature	Larry DeSha Print Name

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In the Matter Of ERROL I. HORWITZ	Case Number(s): 07-O-12123-RAP
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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 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.)**

12/7/10
Date



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 Los Angeles, on December 7, 2010, 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:

ERROL I HORWITZ
5550 TOPANGA CANYON BLVD STE 200
WOODLAND HILLS CA 91367

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:

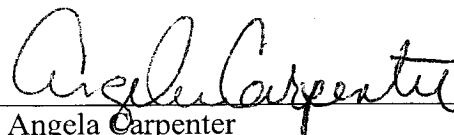
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

LARRY DESHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 7, 2010.



Angela Carpenter
Case Administrator
State Bar Court