

(Do not write above this line.)

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

<p>Counsel For The State Bar</p> <p>TREVA R. STEWART 180 Howard Street, 7th Fl San Francisco, CA 94105</p> <p>Bar # 239829</p>	<p>Case Number (s) 07-O-12378, 08-O-10439</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED <i>RS</i></p> <p>JAN 12 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>JUSTIN SCHWARTZ 409 13th Street, 17th Floor Oakland, CA 94612</p> <p>Bar # 144470</p>	<p>Submitted to: Assigned Judge</p>	
<p>In the Matter Of: JUSTIN SCHWARTZ</p> <p>Bar # 144470</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 15, 1989**.
- (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.



(Do not write above this line.)

(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: **three billing cycles following the effective date of the Supreme Court order.**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances

(Do not write above this line.)

As a result of respondent's misconduct in case number 07-O-12378, the lawsuit of his clients was dismissed without prejudice.

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's participation in this matter at the investigatory stage was not consistent. However since assignment to deputy trial counsel, respondent has been candid and cooperative in these 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 \$ o n i n 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: **Provide proof of satisfaction of \$250 sanction imposed by Alameda County Superior Court in case number RG05210379.**

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is 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)

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.

(Do not write above this line.)

- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JUSTIN SCHWARTZ

CASE NUMBER(S): 07-O-12378, 08-O-10439

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.

FACTS

07-O-12378

1. On February 8, 2006 Nellie Rosato, Rex Rosato and Eugene Rosato ("the Rosatos") signed attorney client agreements with respondent to represent them in a personal injury matter.
2. On February 23, 2006, respondent substituted as attorney for the Rosatos in the matter entitled, *Rosato v. Gill*, Alameda Superior Court Case No. HG05-203395. Respondent also appeared for a case management conference that same day.
3. Between June 2006 and October 2006, respondent appeared for case management conferences in *Rosato v. Gill*, obtained a copy of the Rosatos' uninsured/ underinsured motorist insurance policy, discussed settlement of the third party claim with the Rosatos and communicated with the third party insurance carrier regarding settlement of the Rosatos' claims.
4. On January 30, 2007, despite having notice and without good cause, respondent failed to appear at a case management conference ("CMC") in *Rosato v. Gill*.
5. On February 14, 2007, despite having notice and without good cause, respondent failed to appear at a CMC in *Rosato v. Gill*.
6. On February 26, 2007, despite having notice and without good cause, respondent failed to appear at a CMC in *Rosato v. Gill*.
7. On February 28, 2007, Nellie Rosato left messages on respondent's voicemail and with respondent's secretary. She also sent respondent via certified mail and fax a letter dated February 23, 2007 which stated that she had called respondent for several months, left messages, and faxed over the Rosato's insurance coverage information. Without good cause, respondent failed to return Nellie Rosato's calls or respond to her letter.
8. On March 14, 2007, despite having notice and without good cause, respondent failed to appear at a CMC in *Rosato v. Gill*.
9. On March 16, 2007, respondent was served with an Order to Show Cause ("OSC") directing him to appear in court on April 18, 2007, and show cause why he should not be sanctioned for (1) failing to comply with the standards set forth in Chapter Four:

- Administration of Civil Litigation of the Alameda Superior Court Rules; and (2) failing to appear at the March 14, 2007 CMC.
10. Respondent failed to inform the Rosatos of the OSC for plaintiffs to appear on April 18, 2007 or face sanctions resulting in the dismissal of *Rosato v. Gill*.
 11. On April 10, 2007, the Rosatos sent a letter to respondent via certified mail, with a copy of the February 23, 2007 letter enclosed, requesting that respondent pursue underinsured motorist claims as discussed the week before September 24, 2006 and that respondent communicate with them regarding prompt settlement of their claims. Respondent failed to pursue underinsured motorist claims on behalf of the Rosatos and failed to contact the Rosatos.
 12. On April 18, 2007, without good cause, respondent failed to appear at the CMC and OSC hearing in *Rosato v. Gill*. The court sanctioned respondent for failure to appear and dismissed *Rosato v. Gill* without prejudice.
 13. On April 23, 2007, respondent received notice of the dismissal of *Rosato v. Gill*. Respondent failed to inform the Rosatos that the court dismissed *Rosato v. Gill*.
 14. On July 23, 2007, the State Bar forwarded to respondent a letter informing him of the investigation and requesting a written response and supporting documentation by August 6, 2007. Without good cause, respondent failed to respond to the investigation by August 6, 2007.
 15. On August 7, 2007, respondent phoned to ask for an extension. Without good cause, respondent failed to submit a written request for an extension.
 16. On August 29, 2007, the State Bar forwarded to respondent a letter informing him that his failure to provide a written response and requested documents by September 7, 2007 may be considered a failure to cooperate with the State Bar investigation. Without good cause, respondent failed to respond.

08-O-10439

17. Prior to April 2007, Melina Marcano ("Marcano") retained respondent to represent her in a wrongful termination case entitled *Marcano v. Astrazeneca* ("*Astrazeneca*"). Respondent was Marcano's fourth attorney in *Astrazeneca*.
18. Respondent appeared on Marcano's behalf at a hearing in *Astrazeneca* in June 2007.
19. In or about July 2007, following respondent's failure to respond to her attempts to contact him by telephone, email and going to his office, Marcano sent respondent a letter terminating the attorney-client relationship.
20. A CMC was scheduled by the court for August 14, 2007 and respondent was provided notice of the CMC.
21. The parties were required to file a Case Management statement at least 15 days prior to the CMC hearing pursuant to California Rules of Court section 3.725.
22. On July 30, 2007, defendants filed a Case Management Statement. A copy of the Case Management Statement was served on respondent.
23. Respondent did not file a Case Management Statement.
24. Respondent did not appear at the CMC on August 14, 2007. The court subsequently issued an Order to Show Cause ("OSC") and set the OSC hearing for October 31, 2007.

25. On August 17, 2007, defendants in *Astrazeneca* filed a Motion to Dismiss for Failure to Prosecute.
26. The OSC hearing proceeded on October 31, 2007. Without good cause respondent failed to appear at the OSC hearing on October 31, 2007. The court issued a Case Management Order following the OSC hearing which sanctioned respondent for failing to file and serve a Case Management Conference Statement at least 15 days before, and failing to appear at, the August 14, 2007 CMC.
27. The October 31, 2007 Case Management Order ordered respondent to pay monetary sanctions in the sum of \$250.00 to the clerk of the court within 30 calendar days. To date respondent has not paid the monetary sanction to the court.
28. The October 31, 2007 Case Management Order also relieved respondent as counsel of record pursuant to Marcano's request.
29. On January 22, 2008, the court heard and granted defendants Motion to Dismiss the matter based on, inter alia, plaintiff's failure to exercise reasonable diligence in prosecuting the case and by repeatedly failing to respond to written discovery.

CONCLUSIONS OF LAW

07-O-12378

1. By failing to appear in court for the case management conferences on January 30, 2007, February 14, 2007, February 26, 2007, March 14, 2007, and April 18, 2007 in the *Rosato v. Gill* matter and failing to pursue underinsured motorist claims under the Rosatos' uninsured/underinsured motorist insurance policy, respondent intentionally, recklessly and repeatedly failed to perform competent legal services in violation of rule 3-110(A) of the Rules of Professional Conduct ("rule").
2. By failing to return the Rosatos' telephone calls and respond to their February 23, 2007, February 28, 2007, and April 10, 2007 requests for information, respondent failed to promptly comply with reasonable requests for information in violation of rule 3-500.
3. By failing to inform the Rosatos that (1) the court issued an OSC; and (2) the court dismissed *Rosato v. Gill*, respondent wilfully and intentionally failed to keep the client reasonably informed of significant developments in the matter in which he agreed to perform legal services in violation of Business and Professions Code ("B&P") section 6068(m).
4. By failing to answer the State Bar July 23, 2007 and August 7, 2007 letters requesting information, respondent failed to cooperate in a State Bar investigation in violation B&P section 6068(i).

08-O-10439

1. By failing to pay the \$250.00 monetary sanction as ordered by the court due to his failure to appear at the CMC on August 14, 2007 and the OSC hearing on October 31, 2007, respondent wilfully disobeyed a court order to pay sanctions in violation of B&P section 6103.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on August 19, 2008 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 and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 5, 2008.

AGGRAVATING CIRCUMSTANCES.

ADDITIONAL AGGRAVATING CIRCUMSTANCES.

Although there is no evidence of significant harm to a client, as a result of respondent's misconduct in case number 07-O-12378, the Rosato's lawsuit was dismissed without prejudice.

MITIGATING CIRCUMSTANCES.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

Respondent has no prior record of discipline.

Respondent's participation in this matter at the investigatory stage was not consistent. However since assignment to deputy trial counsel, respondent has been candid and cooperative in these proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT

Standard 2.4(b) provides that a member's willful failure to perform or willful failure to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and degree of harm to the client.

Standard 2.6 states in pertinent part that the violation of Business and Professions Code sections 6068 and 6103 shall result in disbarment or suspension depending on the gravity of the harm, if any, to the victim.

CASE LAW

The following cases are applicable in this matter:

Colangelo v. State Bar (1991) 53 Cal.3d 1255
Bach v. State Bar (1991) 52 Cal.3d 1201
Van Sloten (189) 48 Cal.3d 933

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 December 5, 2008, the estimated costs in this matter are \$2,973.88. 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
JUSTIN SCHWARTZ

Case number(s):
07-O-12378, 08-O-10439

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.

12/22/2008

Date



Respondent's Signature

Justin Schwartz
Print Name

Date

12/29/08

Date

Respondent's Counsel Signature



Deputy Trial Counsel's Signature

Print Name

Treva R. Stewart
Print Name

(Do not write above this line.)

In the Matter Of JUSTIN SCHWARTZ	Case Number(s): 07-O-12878
--	--------------------------------------

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.)**

Date Jan. 8, 2009 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, January 12, 2009, 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:

**JUSTIN D. SCHWARTZ
409 13TH ST 17TH FL
OAKLAND, CA 94612**

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

TREVA R. STEWART , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 12, 2009.



Laurretta Cramer
Case Administrator
State Bar Court