



ORIGINAL

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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Nathan A. Reiersen Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 Tel. (213) 765-1165 / Fax (213) 765-1383 Bar # 204129	Case Number (s) 07-O-13688-RAH <div style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</div>	(for Court's use) <div style="text-align: center; font-size: 1.5em;">FILED</div> <div style="text-align: center;">DEC 26 2008 </div> <div style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent David Paul Schwartz, Esq. 777 Viewcrest Drive Ventura, CA 93003 Tel. (805) 642-1246 Bar # 45914	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: David Paul Schwartz Bar # 45914 A Member of the State Bar of California (Respondent)		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 15, 1970**.
- (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 **19** 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."

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- (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: **2010, 2011 and 2012**
(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.
- (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.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. **See Attachment, Mitigating Circumstances, p. 13.**
- (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

See Attachment, Mitigating Circumstances, p. 13.

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 **one (1) year**, 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.
- (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.

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- (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: See Attachment, Other Conditions at p. 13.**

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Attachment language begins here (if any):

See "ATTACHMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION."

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: David P. Schwartz

CASE NO: 07-O-13688

FACTS AND CONCLUSIONS OF LAW:

Respondent David P. Schwartz ("Respondent") admits that the following facts are true and that he is culpable of the violations of the specified statutes as follows:

Case No. 07-O-13688

Facts

1. On or about July 21, 2006, Annette Laurie ("Laurie") employed Respondent to represent her in *Annette Laurie v. Monico Lopez*, Ventura County Superior Court case number D316800 ("*Laurie* matter"), a marriage dissolution matter which included child custody and support issues. Laurie paid Respondent a total of \$15,000 in advance fees (\$5,000 when Respondent was retained, plus an additional \$10,000.00 to Respondent in or about September 2006).

2. On or about July 21, 2006, Respondent filed with the court a Substitution of Attorney in the *Laurie* matter, listing himself as new legal representative for Laurie.

3. On or about July 10, 2007, a Mandatory Settlement Conference ("MSC") was held in Department 32. On that same day, Laurie and her ex-husband agreed to a mutual custody plan. Respondent was present, as was Jeffrey Hoffer ("Hoffer"), counsel for Laurie's ex-husband. The parties agreed to prepare and execute a formal mutual custody plan settlement agreement ("agreement"), and the court continued the MSC to July 31, 2007.

4. On or about July 31, 2007, Hoffer filed a Request for Continuance of the July 31, 2007 MSC to September 4, 2007 at 1:30 p.m. in Department 32. That same day, the court granted the Request for Continuance and issued a Minute Order stating, *inter alia*, that on July 12, 2007, Hoffer informed the court via e-mail that the parties had settled the case in its entirety, that the MSC was continued "to finalize settlement," and that the issues of custody and visitation would stand submitted on September 4, 2007.

5. On or about August 8, 2007, Fabiana F. Bec, Respondent's paralegal, sent a letter to Laurie advising her that a MSC in the *Laurie* matter was set for September 4, 2007 at 3:00 p.m. in Department 34 in the Ventura County Superior Court.

6. Between in or about July 11, 2007, and September 4, 2007, Laurie attempted to contact Respondent with regard to the status of the agreement. Laurie repeatedly called Respondent at the telephone number that Respondent had given her, and left messages requesting Respondent to contact her regarding the status of her case. Although respondent received Laurie's messages, he failed to respond.

7. In fact, from in or about August 16, 2007 to September 10, 2007, Respondent was not entitled to practice law for failure to pay California State Bar dues. Respondent knew that he was not entitled to practice law during this time.

8. On or about September 4, 2007, as directed by Bec's letter, Laurie went to Department 34 at 2:45 p.m. for the MSC, but the *Laurie* matter was not listed on the court calendar. She found the *Laurie* matter on the calendar in Department 32, scheduled at 1:30 p.m. No parties or counsel had appeared.

9. On or about September 4, 2007, concerned about missing the MSC, Laurie and her mother went to Respondent's office, located at 300 Esplanade Drive, Suite 1810, Oxnard, California 93036. This was the address that Laurie had been given for Respondent during the course of his employment.

10. Upon arrival, they found that Respondent's office was vacant. No one that Laurie spoke with at that location could provide a forwarding address for Respondent.

11. On or about September 4, 2007, Laurie made approximately thirteen (13) calls to Respondent's telephone number, and was able to leave three voicemail messages requesting Respondent to contact her regarding the status of her case. As to her remaining attempts, the voicemail box was full. Although Respondent received the messages, Laurie did not receive any responses from Respondent. Laurie also sent one text message to Respondent's telephone on that date, to which she obtained no response.

12. On or about September 4, 2007, Laurie performed an internet search for "legal services" in Ventura, California, and she found a residential address for Respondent. The telephone number was the same as that for Respondent's office in Oxnard.

13. On or about September 4, 2007, Laurie's father checked the California State Bar Membership Records on the internet and found that Respondent was not entitled to practice law as of August 16, 2007.

14. On or about September 5, 2007, at approximately 7:45 a.m., Laurie and her father went to Respondent's residential address. Respondent informed Laurie and her father that the hour was not appropriate and they should call him for an appointment after 10 a.m. Laurie's father questioned Respondent's right to practice law and asked what Respondent intended to do to rectify the matter. Respondent did not provide an explanation.

15. On or about that date, September 5, 2007, Laurie wrote to Respondent at his address. The letter was properly mailed via the United States Postal Service, registered mail, return receipt requested, postage prepaid. Respondent received the letter but did not respond. The letter advised Respondent, among other things that:

- (A) Respondent was dismissed as Laurie's attorney in the *Laurie* matter;
- (B) Respondent had not attended the September 4, 2007 MSC;
- (C) Respondent was suspended as of August 16, 2007 for failure to pay State Bar dues;
- (D) Respondent had ignored Laurie's repeated phone calls and messages seeking to find out the status of the case;
- (E) Respondent had not completed the filings for immediate child support and the advance final divorce filing;
- (F) Respondent had not notified Laurie that he would not be able to represent her on September 4, 2007 due to his suspension;
- (G) Respondent had not notified her that he moved his offices to his home;
- (H) Laurie had suffered financial harm because of the failure to perform his duties;
- (I) Laurie demanded that \$5,000.00 be refunded to her to find new counsel.

16. On or about September 11, 2007, Laurie sent another letter to Respondent. The letter was sent by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. Laurie enclosed a substitution of attorney form for Respondent's signature. In the letter, Laurie also requested her complete case file. Respondent received the letter but did not respond, did not execute and return the substitution of attorney form to Laurie, and did not return Laurie's case file to her.

17. On or about September 14, 2007, at 1:30 p.m., a Status Conference was scheduled to take place in the *Laurie* matter. Although Respondent received proper notice of the September 14, 2007 Status Conference, Respondent never informed Laurie of the Status Conference. No parties or their counsel appeared.

18. On or about September 14, 2007, on its own motion, the court set a Hearing re: Status Conference for October 3, 2007, and ordered all parties and their attorneys to appear. A copy of the court's Minute Order was properly served by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business, to Respondent's address. Respondent received the Minute Order.

19. Respondent never notified Laurie of the October 3, 2007 Hearing re: Status Conference or that she was ordered to attend. Hoffer provided notice to Laurie via a courtesy email copy to Laurie's father of the court's September 14, 2007 Minute Order.

20. On or about October 3, 2007, Laurie appeared at the Hearing re: Status Conference in the *Laurie* matter without Respondent. Laurie advised the court of the situation, and the court relieved Respondent as counsel of record.

21. By ceasing work on Laurie's behalf; failing to communicate with Laurie; failing to either appear at the MSC on September 4, 2007 and explain that he was not entitled to practice law and request the Court to continue the MSC until such time as Respondent's suspension was lifted or to arrange for another attorney to appear at the MSC to represent Laurie's interests, with Laurie's consent; failing to appear at the September 14, 2007 and October 3, 2007 hearings; and moving his office without notifying Laurie, Respondent effectively withdrew from representation of Laurie.

22. At no time did Respondent inform Laurie that he was withdrawing from employment in the *Laurie* matter. Nor did Respondent take any other steps to avoid reasonably foreseeable prejudice to Laurie.

23. On or about September 27, 2007, the State Bar opened an investigation pursuant to a complaint filed by Laurie. On or about February 21, 2008 and March 26, 2008, a State Bar investigator wrote letters to Respondent regarding the *Laurie* matter. The investigator's letters were placed in sealed envelopes correctly addressed to Respondent at his State Bar membership records address. The letters were properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason. The investigator's letters requested that Respondent respond in writing to specified allegations of

misconduct being investigated by the State Bar in the *Laurie* matter. Respondent did not respond to either of the investigator's letters or otherwise communicate with the investigator.

24. On or about July 11, 2008, a State Bar Deputy Trial Counsel wrote to Respondent regarding the *Laurie* matter. The letter was placed in a sealed envelope correctly addressed to Respondent at his State Bar membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the letter as undeliverable or for any other reason. The July 11, 2008 letter requested, *inter alia*, that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the *Laurie* matter. Respondent did not respond to the letter or otherwise communicate with the Deputy Trial Counsel.

25. On December 15, 2008, as a mandatory condition precedent to the parties executing the instant stipulation, Respondent delivered Laurie's client papers and property to the State Bar for forwarding to Laurie.

Conclusions of Law

26. By failing to provide the necessary legal services with respect to the *Laurie* matter; moving his office without advising Laurie; effectively withdrawing from representation of Laurie without notifying her; failing to sign a substitution of attorney when requested by Laurie; failing to inform Laurie that the court ordered her to attend the October 3, 2007 Hearing re: Status Conference; and failing to take any steps to avoid prejudice to Laurie's rights, Respondent willfully failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

27. By failing to respond to repeated reasonable inquiries from Laurie; failing to answer Laurie's and her father's reasonable inquiries when they found Respondent at his home address; failing to update Laurie with regard to the status of the case; failing to advise Laurie at any time before, during or after his suspension period that he was not entitled to practice law from on or about August 16, 2007 to on or about September 10, 2007; failing to respond to Laurie's letters of September 5 and 11, 2007; and failing to inform Laurie that the court ordered her to attend the October 3, 2007 Hearing re: Status Conference, Respondent failed to respond to reasonable client inquiries and failed to update the client as to significant developments, in willful violation of Business and Professions Code section 6068(m).

28. By failing to release Laurie's file to Laurie, Respondent failed to promptly release, upon termination of employment, client papers and property to the client at the request of the client in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

29. By not providing a written response to the allegations in the *Laurie* matter or otherwise cooperating in the investigation of the *Laurie* matter, Respondent failed to cooperate in a disciplinary investigation in willful violation of Business and Professions Code section 6068(i).

MITIGATING CIRCUMSTANCES

FACTS SUPPORTING MITIGATING CIRCUMSTANCES

Good Character:

Respondent has been an active member in, and in 2007 received an award recognizing his contributions to, the Ventura County Collaborative Practice Group – Collaborative Family Law Professionals.

Additional Mitigating Circumstances:

Respondent has been in practice since 1970 without prior discipline.

Respondent expresses regret for the harm he caused to Laurie and the involvement of State Bar proceedings.

OTHER CONDITIONS:

MANDATORY FEE ARBITRATION

A. Duty to Notify Individuals of Right to Mandatory Fee Arbitration

Within thirty (30) days after the effective date of this discipline, Respondent agrees to send a letter by certified mail, return receipt requested, to the individuals set forth below and agrees to therein offer to initiate fee arbitration, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individuals, upon the request of any such individuals, regarding fees Respondent received for representation of the former clients set forth below, unless Respondent has previously sent such a written offer to said individuals. The letter shall include the address and phone number of the Office of Probation along with a statement that the Office of

Probation will be monitoring his fee arbitration conditions and may be contacted by the individual.

Annette Laurie

B. Upon Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration

Within forty (40) days after the effective date of this discipline, Respondent agrees to provide the Office of Probation with a copy of the letters offering to initiate and participate in fee arbitration with the individuals set forth above, along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

Within sixty (60) days after the effective date of this discipline, Respondent agrees to provide the Office of Probation a declaration from each of the individuals setting forth that a letter had been received from Respondent offering to initiate fee arbitration, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration.

Respondent agrees to advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any individual set forth above within fifteen (15) days after any such request or within fifteen (15) days after the effective date of this discipline, whichever is later. Respondent agrees to provide the Office of Probation with any information requested to verify Respondent's compliance, including submission of any written request for fee arbitration or the submission of a declaration from any individual setting forth the date arbitration was requested.

Respondent agrees to initiate fee arbitration within fourteen (14) days of any request, including making any payment required by the organization conducting the fee arbitration. Respondent agrees to fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration with respect to any of the above individuals.

Respondent further agrees to accept binding arbitration on the arbitration request form.

C. Duty to Comply with the Arbitration Award

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, or within thirty (30) days after the effective date of this discipline,

whichever is later, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent agrees to abide by any award, judgment or stipulated award of any such fee arbitrator, and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. Respondent is to make full payment within one hundred eighty (180) days of the issuance of any such award, judgment or stipulated award.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this discipline, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

D. Obligation to Pay Restitution to the Client Security Fund

If the State Bar Client Security Fund has reimbursed any of the above individuals for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, Respondent agrees to pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal amounts, respondent will still be liable for interest payments to such individuals. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

E. Waiver of Objections

If the fee arbitration proceeding results in an award to any of the above individuals, Respondent waives any objections related to the Office of the Chief Trial Counsel, Client Security Fund or State Bar Court notification to any such individual regarding assistance in obtaining restitution or payment from the Client Security Fund or from Respondent, at any time after the effective date of this discipline. Respondent expressly waives confidentiality for purposes of effectuating this section, has reviewed rule 806 of the Rules of Procedure, and has had an opportunity to consult with counsel prior to this waiver.

F. Effect of Failure to Comply with Fee Arbitration Conditions

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in a violation of his probation. Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court ordering Respondent to pay back the full amount of attorneys' fees paid to Respondent by each of the individuals listed plus 10% interest from the date Respondent received the fees.

PENDING PROCEEDINGS:

The disclosure date referred to paragraph (A)(7) of the instant stipulation was November 13, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS:

The Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 25, 2008, the costs in this matter are \$2,611.00. 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 DISPOSITION:

The determination of the appropriate sanction must begin with the purposes of attorney discipline and Standard 1.3 of the *Standards for Attorney Sanctions for Professional Misconduct*. The primary purposes are the protection of the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence in the profession. The rehabilitation of the member is a permissible object only if the imposition of rehabilitative sanctions (and arguably lesser sanctions) is consistent with the primary purposes.

Standard 1.6(a) provides that if two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

Standard 1.6(b)(ii) provides that the appropriate sanction shall be the sanction imposed unless mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.

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

Standard 2.6 provides that "Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3: (a) Section[] ...6068."

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

The Supreme Court recognizes the importance of the standards to promote consistency, and uniform application, but as they are not binding on the Supreme Court, the Court has recognized that there may be bases, both under the facts and given mitigation, to deviate from them, as does the Review Department, where unique factors (and justice) may warrant. (See *Silverton v. State Bar* (2005) 36 Cal.4th 113; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980).

It is misconduct for a member to willfully fail to perform the legal services for which he has been retained and to willfully fail to communicate with a client. If a member is essentially withdrawing from employment, he is obligated to give due notice to the client. (*Lister v. State Bar* (1990) 51 Cal.3d 1117, 1126; see also *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680-681 (A member's failure to communicate with his client may constitute abandonment when the member's failure to communicate resulted in the effective cessation of work on the client's case, foreclosed the client from choices regarding her case, or indicated a withdrawal from employment).)

The agreed-upon disposition is consistent with the standards and within the range of prior decisions' levels of discipline in which attorneys with no prior discipline failed to perform services for and abandoned a single client. (See, e.g., *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32; *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196; *Layton v. State Bar* (1991) 50 Cal.3d 889; *Harris v. State Bar* (1990) 51 Cal.3d 1082; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921; *Wren v. State Bar* (1983) 34 Cal.3d 81.)

STATE BAR ETHICS SCHOOLS:

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.

(Do not write above this line.)

In the Matter of David Paul Schwartz	Case number(s): 07-O-13688-RAH
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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.

12/8/2008
Date


Respondent's Signature

David Paul Schwartz
Print Name

N/A
Date

Respondent's Counsel Signature

N/A
Print Name

12/15/08
Date


Deputy Trial Counsel's Signature

Nathan A. Reiersen
Print Name

(Do not write above this line.)

In the Matter Of David Paul Schwartz	Case Number(s): 07-O-13688-RAH
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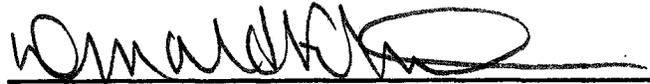
ORDER

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.)**

12/17/08
Date


Judge of the State Bar Court

DONALD F. MILES

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 26, 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 Los Angeles, California, addressed as follows:

DAVID PAUL SCHWARTZ
777 VIEWCREST DR
VENTURA, CA 93003

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 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:

Nathan A. Reiersen, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 26, 2008.



Cristina Potter
Case Administrator
State Bar Court