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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar  <b>Ashod Mooradian</b> Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004  Bar # 194283	Case Number (s) 07-O-14229  <div style="text-align: center; font-size: 24pt; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use)  <div style="text-align: center; font-size: 24pt; font-weight: bold;">FILED <i>pr</i></div> <div style="text-align: center;">AUG 04 2009</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</div>
Counsel For Respondent  <b>James R. DiFrank, A.P.L.C</b> PHILADELPHIA LAW CENTER, LLC 12227 Philadelphia Street Whittier, CA 90601-3931  Bar # 105591	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: <b>LEO J. MORIARTY</b>  Bar # 140093  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.	

**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 June 6, 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 15 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: **2011, 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 **96-O-04531**
  - (b)  Date prior discipline effective **March 13, 2000**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **1) Business and Professions Code (B&P) section 6068(d) [Making false representations to mislead the court]; 2) B&P section 6106 [Moral Turpitude - making false statements to conceal the truth from the court]; 3) Rule 3-700(A)(2), of the Rules of Professional Conduct [withdrawal from employment without taking reasonable steps to avoid foreseeable prejudice to client].**
  - (d)  Degree of prior discipline **One year stayed suspension, 30 days actual suspension, three years probation, successful passage of Ethics School and MPRE within one year and law practice management condition.**
  - (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. **Respondent's misconduct in failing to appear at three hearings, including the Court's OSC regarding the failure to appear, ultimately led to the dismissal of one of his client's cases.**
- (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.

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(7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **Respondent's misconduct evidences multiple acts of wrongdoing, namely a failure to perform, failure to inform his client of significant developments and a failure to communicate with his client.**

(8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

None.

**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 cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline. Respondent also provided documentation as requested by the State Bar.**

(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. **Respondent has provided the State Bar with "good character" declarations from four attorneys who all state that they are aware of the charges and facts alleged in the NDC, have known Respondent for a**

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**significant time, have worked professionally with Respondent and would not hesitate to vouch for his good moral character**

(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**

None

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **Two (2) years**.

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 **Forty-Five (45) 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:
  - Substance Abuse Conditions                       Law Office Management Conditions
  - Medical Conditions                                       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 954-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**  
  
 No MPRE recommended. Reason:
- (2)  **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:**

**MCLE CREDIT: Respondent will not receive Minimum Continuing Legal Education (MCLE) credit for attending the State Bar Ethics School as required pursuant to paragraph E.(8) above. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar of California.)**

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

**IN THE MATTER OF:** LEO J. MORIARTY

**CASE NUMBER(S):** 07-O-14229

**A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:**

The parties waive any variance between the Notice of Disciplinary Charges ("NDC") filed on December 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. 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.

**B. 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:

1. On July 1, 2003, Diane "Di" Marie Boler ("Marie") employed the law firm of Horton, Barbaro & Reilly ("HB&R") to represent her in a civil lawsuit against Hans Schaffner and Sirit Schaffner, et al. Marie had previously employed HB&R to represent her in a prior civil lawsuit and a prior administrative proceeding.
2. On July 1, 2003, HB&R filed a civil lawsuit on behalf of Marie in the Superior Court titled *Di Marie v. Schaffner, et al.*, Case No. 03CC08571 ("*Marie v. Schaffner I*").
3. On March 2, 2004, a Case Management Conference was conducted in *Marie v. Schaffner I*. The Superior Court scheduled the matter for a jury trial for November 8, 2004.
4. On September 3, 2004, Marie employed Respondent to represent her in *Marie v. Schaffner I* as Marie's attorney of record.
5. On October 1, 2004, Respondent filed a substitution of attorney and substituted into *Marie v. Schaffner I* as Marie's attorney of record.
6. On November 8, 2004, Respondent and counsel for the defendants appeared for the trial in *Marie v. Schaffner I*. The Superior Court conducted a pre-trial conference and then trailed the trial until November 15, 2004. Respondent received notice of the new trial date.

7. On November 10, 2004, Respondent filed a "Notice of Settlement" (partial settlement) on behalf of Marie in *Marie v. Schaffner I*.

8. On November 15, 2004, Respondent and counsel for the defendants appeared for the trial in *Marie v. Schaffner I*. The Superior Court conducted an "informal hearing," trailed the trial until November 16, 2004, and ordered Marie to be present on November 16, 2004. Respondent received notice of the new trial date.

9. On November 15, 2004, Respondent filed a "Request for Dismissal - Partial without Prejudice" on behalf of Marie in *Marie v. Schaffner I*.

10. On November 16, 2004, Respondent, Marie, and counsel for the defendants appeared for the trial in *Marie v. Schaffner I*. The Superior Court ordered the matter to be dismissed without prejudice with the consent of Respondent and Marie.

11. On February 8, 2005, Respondent filed a civil lawsuit on behalf of Marie in the Superior Court titled *Di Marie v. Schaffner, et al*, Case No. 05CC02974 ("*Marie v. Schaffner II*").

12. On March 25, 2005, the Superior Court served a Notice of Case Management Conference ("CMC") on Respondent for in *Marie v. Schaffner II*. The notice set the CMC for June 27, 2005. Respondent received notice of the CMC.

13. On June 27, 2005, Respondent failed to appear for the CMC in *Marie v. Schaffner II*. The Superior Court set the matter for an Order to Show Cause re Dismissal and/or Sanctions ("OSC re Dismissal") on July 11, 2005. The Clerk of the Court served notice of the OSC re Sanctions on Respondent. Respondent received notice of the OSC.

14. On July 11, 2005, Respondent appeared for the OSC re Dismissal in *Marie v. Schaffner II*. The Superior Court set the matter for a CMC on September 12, 2005. Respondent received notice of the CMC.

15. On September 12, 2005, Respondent failed to appear for the CMC in *Marie v. Schaffner II*. The Superior Court set the matter for an OSC re Dismissal on October 3, 2005. The Clerk of the Court served notice of the OSC re Sanctions on Respondent. Respondent received notice of the OSC.

16. On September 16, 2005, Respondent sent an e-mail to Marie regarding *Marie v. Schaffner I*. The e-mail stated, in part, that:

[Respondent] will be lucky if [he] can get [Marie] \$25,000 gross on this. Please send me your written authorization for this amount at least. If I can get more great. If I can not get that much I will come back to you to request authority for less. We need to get moving on this and get this over with.

17. On or about September 16, 2005, Marie sent an e-mail to Respondent that authorized him to try to settle *Marie v. Schaffner II* for \$25,000 and requested that Respondent provide her a status report on his attempt to settle. Respondent received the e-mail.

18. On or about September 28, 2005, Marie sent an e-mail to Respondent that requested a status report on possibility of settling *Marie v. Schaffner II*. Respondent received the e-mail.

19. Respondent did not respond to the September 28, 2005 e-mail regarding *Marie v. Schaffner II*.

20. On October 3, 2005, Respondent failed to appear for the OSC re Dismissal in *Marie v. Schaffner II*. The Superior Court dismissed the case. The Clerk of the Court served notice of the dismissal. Respondent received notice of the dismissal.

21. Respondent did not inform Marie that *Marie v. Schaffner II* had been dismissed by the court.

22. On October 7, 2005, Marie sent an e-mail to Respondent that requested a status report on *Marie v. Schaffner II*. Respondent received the e-mail.

23. Respondent did not respond to the October 7, 2005 e-mail regarding *Marie v. Schaffner II*.

24. On or about October 11, 2005, Marie sent an e-mail to Respondent that requested that Respondent obtain a letter from the attorney(s) representing the defendants in *Marie v. Schaffner II* that Marie could send to her creditors that stated that the defendants refused to settle *Marie v. Schaffner II*. Respondent received the e-mail.

25. Respondent did not respond to the e-mail or otherwise communicate with Marie regarding the court's dismissal of *Marie v. Schaffner II*.

Conclusions of Law:

26. By: (a) failing to appear for the CMC on June 27, 2005, CMC on September 12, 2005, and OSC on October 3, 2005; (b) permitting *Marie v. Schaffner II* to be dismissed; and (c) failing to take any action to reinstate *Marie v. Schaffner II* to active status after it had been dismissed, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of rule 3-110(A) of the *Rules of Professional Conduct*.

27. By failing to inform Marie that *Marie v. Schaffner II* had been dismissed and that he had taken no action to have it reinstated, Respondent willfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services in violation of section 6068(m) of the *Business and Professions Code*.

28. By failing to respond to the e-mails from Marie requesting status reports on *Marie v. Schaffner II* after the court's dismissal, Respondent willfully failed to respond promptly to reasonable status inquiries of a client in violation of section 6068(m) of the *Business and Professions Code*.

Other Stipulations of the Parties:

29. Pursuant to *Rules of Procedure of the State Bar of California*, rule 262(e)(1) and in the interests of justice, the State Bar hereby dismisses Count Four of the NDC, which alleged a violation of rule 4-100(B)(3) of the *Rules of Professional Conduct*.

30. For purposes of agreeing upon level of discipline the parties herein have agreed to treat Counts Two and Three of the NDC as one violation of section 6068(m) of the *Business and Professions Code*.

**C. AUTHORITIES SUPPORTING DISCIPLINE.**

Applicable Standards:

In *In re Silvertan*<sup>1</sup>, the California Supreme Court held that the *Standards For Attorney Sanctions For Professional Misconduct* ("Standard" or "Standards") are entitled to "great weight" and the Court will "not reject a recommendation arising from the *Standards* unless [it has] grave doubts as to the propriety of the recommended discipline." The *Standards* are not binding but "they promote the consistent and uniform application of disciplinary measures."<sup>2</sup> The "presumptively appropriate level of discipline" for any misconduct is as set forth in the standards.<sup>3</sup>

Further, the primary purposes of disciplinary proceedings are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession.<sup>4</sup> Pursuant to the *Standards* and as further discussed below, Respondent's misconduct warrants significant discipline.

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

*Standard 2.6* states that the 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) Sections 6067 and 6068..."

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<sup>1</sup> (2005) 36 Cal. 4th 81, 92.

<sup>2</sup> *Id.*

<sup>3</sup> See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.

<sup>4</sup> See *Standard 1.3*.

*Standard 1.7(a)* states that if a member is found culpable "...of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by *Standard 1.2(f)*, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

Aggravating Circumstances:

*Standard 1.2(b)* provides for a greater degree of sanction than set forth in the *Standards* where aggravating circumstances exist. Three aggravating circumstances exist in this matter. First, pursuant to *Standard 1.2(b)(i)*, Respondent has a prior record of discipline that is not remote in time and involves similar misconduct such as a failure to perform legal services competently and a failure to communicate with or respond to a client. Second, pursuant to *Standard 1.2(b)(ii)*, Respondent's current misconduct evidences acts of wrongdoing, namely a failure to perform, failure to inform his client of significant developments and a failure to communicate with his client. Third, pursuant to *Standard 1.2(b)(iv)*, Respondent's misconduct harmed significantly a client, the public or the administration of justice. Specifically, in this matter, Respondent's client was harmed in that Respondent's misconduct ultimately led to the dismissal of one of his client's cases. In addition, Respondent's failure to appear at the CMC and then his failure to appear at another CMC and OSC also resulted in harm.

Mitigating Circumstances:

*Standard 1.2(e)* provides for a more lenient degree of sanction than set forth in the *Standards* where mitigating circumstances exist. In this case, there are two mitigating circumstances. First, pursuant to *Standard 1.2(e)(v)*, Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline. Respondent also voluntarily provided documentation as requested by the State Bar. Second, pursuant to *Standard 1.2(e)(vi)*, Respondent has made a noteworthy demonstration of good character of the member attested to by a wide range of references in the legal community and who are aware of the full extent of the member's misconduct. Respondent has provided the State Bar with "good character" declarations from four attorneys. All four attorneys state in their declarations that they are aware of the charges and facts alleged in the NDC, have known Respondent for a significant time, have worked professionally with Respondent and would not hesitate to vouch for his good moral character calling the events alleged in the NDC an "aberration". In addition, Respondent has an impressive log of pro bono legal services provided to charitable non-profit entities, criminal defendants and civil litigants, which began shortly after admission and have continued through the present.

Given the nature and scope of Respondent's misconduct, and considering evidence of aggravating and mitigating circumstances, the appropriate level of discipline under the *Standards* is a period of actual suspension of 45 days "to deter the recalcitrant attorney from future wrongdoing."<sup>5</sup>

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<sup>5</sup> *In Re Silvertown* (2005) 36 Cal. 4th 81, 95.

Caselaw:

In fashioning the appropriate level of discipline, the *Standards* are the starting point. Consideration must also be given to whether the recommended discipline is consistent with or disproportional to prior decisions of the California Supreme Court and the Review Department of the State Bar Court.

In *In the Matter of Aulakh*,<sup>6</sup> the Review Department upheld the Hearing Department judge's decision to suspend a respondent from the practice of law for one year, stay the execution of the suspension, and place the respondent on probation for three years on terms and conditions including the payment of restitution and 45 days of actual suspension. In *Aulakh*, the respondent failed to perform legal services competently in a single client matter, improperly withdrew from employment while his client was incarcerated, failed to return unearned fees, and failed to render an accounting to the client.

Comparison:

The present matter did not involve improper withdrawal or failure to return unearned fees or to render an accounting as in *Aulakh*. Here, Respondent's misconduct significantly harmed his client because his failure to appear as ordered on three occasions caused the dismissal of the case. Further, Respondent's misconduct in this matter, as discussed above, is aggravated by three factors: a) a prior record of discipline; b) multiple acts of wrongdoing; and c) harm to the client, the public, the courts and the administration of justice. However, as discussed above, there are two factors in mitigation. First, Respondent cooperated with the State Bar to the extent that he stipulated to facts, conclusions of law and level of discipline. Second, Respondent's good character has been attested to by four attorneys who have known Respondent for a lengthy period of time and are fully aware of extent of the charges in this matter. In addition, Respondent has performed significant amounts of pro bono work for a variety of clients and charitable entities.

Therefore, Respondent's actual suspension from the practice of law for 45 days is a level of discipline consistent with the applicable standards and caselaw.

**D. PENDING PROCEEDINGS.**

The disclosure date referred to on page one, paragraph A. (7) was July 1, 2009.

**E. COSTS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of July 1, 2009, the estimated prosecution costs in this matter are approximately \$4,294.00. Respondent acknowledges that this figure is an estimate only. 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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<sup>6</sup> (1997) 3 Cal. State Bar Ct. Rptr. 690.

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JAN

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in *Business and Professions Code*, section 6140.7 and as a money judgment unless relief has been granted under rule 286 of the *Rules of Procedure of the State Bar of California*.

ZAD  
LW

In the Matter of  
LEO J. MORIARTY

Case number(s):  
07-O-14229

A Member of the State Bar

### Law Office Management Conditions

- a.  Within **60** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b.  Within days/ months/ **One (1)** years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **six (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c.  Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for **two (2)** year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

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In the Matter of LEO J. MORIARTY	Case number(s): 07-O-14229
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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.

7-07-09  
Date

  
Respondent's Signature

\_\_\_\_\_  
Leo J. Moriarty  
Print Name

7/7/09  
Date

  
Respondent's Counsel Signature

\_\_\_\_\_  
James R. DiFrank  
Print Name

7/8/2009  
Date

  
Deputy Trial Counsel's Signature

\_\_\_\_\_  
Ashod Mooradian  
Print Name

*Handwritten initials*

(Do not write above this line.)

In the Matter Of <b>LEO J. MORIARTY</b>	Case Number(s): <b>07-O-14229</b>
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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.)

7/27/09  
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 San Francisco, on August 4, 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:

**JAMES RICHARD DIFRANK  
12227 PHILADELPHIA ST  
WHITTIER, CA 90601 - 3931**

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:

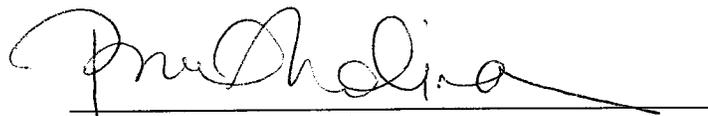
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

**ASHOD MOORADIAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 4, 2009.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court